

GENERAL PROVISIONS - CONSTRUCTION

DEFINITIONS (GPC-001, NOV 2007)

As used throughout this contract, the following terms shall have the meaning set out below:

a. "MR" identifies the Personal and Family Readiness Division, Headquarters, United States Marine Corps. "MCCS" identifies United States Marine Corps Community Services activities.

b. "Contract" identifies this contract or any modification thereto.

c. "Contracting Officer" means a person authorized in writing to execute and administer the contract on behalf of MR and MCCS. It includes said contracting officer's successor or successors. (NOTE: Only the contracting officer may waive or change contract terms; impose additional contract requirements, issue cure, show cause, or termination notices; or render final decisions according to contract terms.) Other MCCS and government officials who are by virtue of their positions concerned with the administration and operation of this contract may take certain administrative actions in behalf of the contracting officer. These officials may conduct inspections, process and collect contract payments, make administrative decisions, and perform other duties of an administrative nature. All questions concerning the authority of other MCCS or government officials should be referred to the Contracting Officer.

d. "Contractor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work thereunder, to include that of any subcontractor.

LEGAL STATUS (GPC-002, MAR 2009)

Marine Corps Community Services (MCCS) activities are an integral part of the Department of Defense, and are a Non-Appropriated Fund Instrumentality (NAFI) of the United States Government. MCCS contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 USC 601-613), in which event MCCS will reimburse the United States Government (31 USC 1304 [c]). No appropriated funds of the United States shall become due or be paid the Contractor by reason of this contract. MCCS procurement is governed by Department of Defense Instruction (DODI) 4105.71 available at <http://www.dtic.mil/whs/directives/corres/pdf/410571p.pdf> and Marine Corps Order P7010.20 available at <http://www.marines.mil/news/publications/Documents/MCO%20P7010.20.pdf>. (NOTE: The Federal Acquisition Regulation [FAR] published pursuant to the Office of Federal Procurement Policy Act of 1974, as amended, applies to procurements with appropriated funds. It does not apply to MCCS procurement except for those provisions of the FAR that have been administratively adopted by MCCS.)

LEGAL STATUS (GPC-002, NOV 2007)

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EXAMINATION OF RECORDS (GPC-003, NOV 2007)

a. This clause is applicable if the amount of the contract exceeds \$10,000 and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three (3) years after final payment under the contract.

b. The Contractor agrees to include clause "a" in all subcontracts hereunder which exceed \$10,000.

OFFICIALS NOT TO BENEFIT (GPC-004, NOV 2007)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

GRATUITIES (GPC-005, NOV 2007)

The MR or MCCS may terminate the right of the Contractor to proceed if, after notice and hearing, the agency head or designee determines that the Contractor, its agent, or another representative-

a. Offered or gave a gratuity (i.e., entertainment or gift) to an officer, official, or employee of the MR, MCCS or Marine Corps; and

b. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

If this contract is terminated per this clause, the MR or MCCS is entitled to pursue the same remedies as in a breach of the contract.

ORAL REPRESENTATIONS (GPC-006, NOV 2007)

This written contract includes the entire agreement between the parties. MR and MCCS will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. MR and MCCS will not be bound by any terms on Contractor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Contracting Officer.

CHANGES (GPC-007, NOV 2007)

The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following: (a) specifications (including drawings and designs); (b) method or manner of performance of the work; (c) MR or MCCS furnished facilities, equipment, materials, services, or site; or (d) accelerating the performance of work. If any such change causes an increase or decrease in the cost of the work under the contract which was changed, an equitable adjustment may be made in the contract price and the contract may be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change. Claims for constructive changes to the contract will not be considered.

REPRESENTATIONS (GPC-008, NOV 2007)

The Contractor shall not represent itself to be an agent or representative of MR, MCCS or any other agency or instrumentality of the United States.

ADVERTISEMENTS (GPC-009, NOV 2007)

The Contractor shall not represent in any manner, expressly or by implication, that items or services purchased or sold under this contract are approved or endorsed by any element of the U.S. Government. Any advertisement by the Contractor which refers to a military resale or MCCS activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.

SUBCONTRACTS (LABOR STANDARDS) (GPC-010, NOV 2007)

a. The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

b. (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (Government Services Administration (GSA) SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) 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.

ASSIGNMENT (GPC-011, NOV 2007)

Contractor shall not assign its rights or delegate its obligations or claims under this contract without the prior written consent of the Contracting Officer.

REPRESENTATIVES (GPC-012, NOV 2007)

Contractor is fully responsible for the actions of all contractor employees, agents, and representatives. Books and records of contractor representatives are subject to examination and audit under the Examination of Records clause of the contract.

TAXES (GPC-013, NOV 2007)

Contractor assumes complete and sole liability for all federal, state, and local taxes applicable to the property, income, and transactions of the Contractor. The prices charged MCCS under this contract will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes which are not applicable:

- a. by reason of MCCS legal status as an instrumentality of the United States government; or
- b. by reason of MR and MCCS immunity from direct state or local taxation; or
- c. by reason of federal, state, or local tax exemptions for sales to the Federal Government; or
- d. otherwise, such as items purchased for export.

It will be the sole responsibility of Contractor to demonstrate, to the reasonable satisfaction of the Contracting Officer, the applicability and amount of any taxes which are included in the prices charged MR and MCCS. The Contracting Officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

PERMITS AND RESPONSIBILITIES (GPC-014, NOV 2007)

The Contractor shall, without additional expense to the MR or MCCS, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work, which may have been accepted under the contract.

NON-WAIVER OF DEFAULTS (GPC-015, NOV 2007)

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

INDEMNIFY AND HOLD HARMLESS (GPC-016, NOV 2007)

a. Contractor shall indemnify, hold harmless and defend MR and MCCS and all other agencies and instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:

(1) The alleged or established violation or infringement of any patent, license, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor;

(2) Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by or resulted solely from the acts or omissions of MR, MCCS, its agents, representatives, or employees.

(3) Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractors, representatives, agents, or employees.

b. MR and MCCS will give Contractor notice and an opportunity to defend.

INSURANCE (GPC-017, NOV 2007)

The Contractor shall maintain, during any contract period, insurance coverage as stated in this contract, with insurance company(ies) acceptable to MR and MCCS. All liability insurance coverage will name the United States, MR, and MCCS as additional and several insureds for claims, demands, suits, judgments, costs, charges, and expenses arising out of or in connection with any loss, damage, or injury resulting from the negligence or other fault of Contractor, or Contractor's agents, representatives, or employees.

WARRANTY (GPC-018, NOV 2007)

Contractor warrants that:

a. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by MR and MCCS of the items and is in addition to other warranties of additional scope given by the Contractor to MR and MCCS.

b. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the

Contractor's warranties are in addition to and do not limit any rights afforded to MR and MCCA by any other clause of this contract.

c. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standards, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent Seal of Approval.

d. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to MR and MCCA.

ITEM SUBSTITUTION AND VARIATION IN QUANTITY (GPC-019, NOV 2007)

No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer.

NON-EXCLUSIVE CONTRACT (GPC-020, NOV 2007)

Unless specified elsewhere, this contract does not establish Contractor as the sole supplier of goods or services to be provided on this military installation.

INSPECTION AND ACCEPTANCE (GPC-021, NOV 2007)

Inspection and acceptance shall be made by the MR or MCCA per Section E of this contract.

a. The Contractor shall maintain an in-process and end-item quantity control program to ensure shipments to MR and MCCA do not include defective/nonconforming items.

b. Inspection and acceptance shall not be conclusive with respect to latent defects or fraud, or with respect to MR and MCCA rights under the warranty provisions contained herein.

c. In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, MR and MCCA shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies shall be removed by and at the expense of the Contractor promptly after notice. If required by MR or MCCA, the Contractor, after notice of defect or non-conformance, shall with all possible speed, correct or replace the defective or non-conforming supplies or services, or any part thereof. When such rejection, correction or replacement requires transportation of the supplies or part thereof, all shipping and administrative costs to and from the Contractor's plant shall also be borne by the Contractor.

d. In the event the Contractor is unable to replace/reperform products/services and the Contractor refunds the purchase price, the Contractor shall be liable to MR and MCCA for the additional costs of reprocurement (if any).

e. The provisions of this clause do not affect the rights or obligations of either party, as they may be provided for in other portions of this contract or otherwise under applicable law.

INVOICING AND PAYMENT (GPC-022, NOV 2007)

a. **Invoicing Instructions.** In order to be considered proper invoices for purposes of the Prompt Payment Act, invoices must be submitted as follows:

(1) Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings.

(2) Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Contracting Officer) and must contain the following minimum information to enable timely payment:

(a) Name of Contractor.

(b) Invoice date. This cannot be a date earlier than the ship date required by the contract or purchase/delivery order. In the event that the invoice date is a date earlier than the required ship date, MR and MCCS retains the right either to return the improper invoice to the Contractor for correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, for purposes of prompt payment discounts, will be considered to be the date of receipt of the corrected, proper invoice.

(c) Contract or purchase/delivery order number.

(d) Item description and quantity shipped/delivered.

(e) Contract/order line item cost and total.

(f) Shipping and discount terms, including prompt payment discounts, and special allowance(s) if included in the contract. Prompt payment discounts and special allowances must be shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.

(g) "Ship To" address as shown on order or contract.

(h) Freight charges (on FOB origin shipments).

(i) Name, title and phone number of Contractor's contact person.

(j) Complete "remit to" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless in accordance with paragraph b.(8) below.

(3) Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

b. Payment

(1) A proper invoice is an invoice which contains all of the information/documentation specified in paragraph a.(2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated MR or MCCS paying office. Improper invoices may be returned without payment to the Contractor.

(2) The net payment date for MR and MCCS contracts is established at 30 days after receipt of a proper invoice. Discounts for prompt payment, if included in the contract, will be applied as follows:

(a) If the contract or purchase order specifies a prompt payment discount period of less than 30 days, the discount will be taken if payment can be made within the stated period otherwise the net payment will be due 30 days after receipt of a proper invoice.

(b) If the contract or purchase order specifies a prompt payment discount period of 30 days or more, the discount will be taken if payment can be made within the stated period otherwise the net payment will be due 30 days after the prompt payment discount period ends.

(c) If the contract fails to specify any prompt payment discount, then net payment will be due 30 days after receipt of a proper invoice.

(3) In the event that a prompt payment discount, or other special discounts or allowances specified on Contractor's invoice are better than that specified in the contract or purchase order, MR or MCCS may take the more favorable discounts and/or allowances.

(4) For the purpose of determining whether payment is timely made by MR or MCCS, a "day" is counted for each calendar day. When payments fall due on Saturday, Sunday or legal Federal holidays, payments made the following business day will not incur late payment interest penalties.

(5) A discount for prompt payment can be taken by MR or MCCS if the discounted payment is made within the discount period specified. The prompt payment discount period begins to run on the date of the invoice. Computation of the period for prompt payment discounts begins with the date of invoice; computation for net payment begins with receipt of a proper invoice.

(6) Payment is made:

(a) the date a check for payment is dated.

(b) the date an electronic fund transfer is received, regardless of the date the financial institution posts the transfer.

(c) the date a withholding authorized by the contract is initiated by MR or MCCS.

(7) Payment will be made by mailing a check to the address shown on the contract, unless the Contractor provided a different "remit to" address to the Contracting Officer at the time the terms were negotiated or the contract was issued.

(a) If a Contractor wishes to change the address (e.g., street, P.O. box, city/state) to which payment should be sent or wishes its payments to also reflect a factor's name and be sent to the factor's address, the request must be in writing, signed by a responsible official of the

Contractor, and submitted to the Contracting Officer. All such requests must clearly establish which division or subsidiary of a corporation such changes apply to and the address which is superseded by the changes. These changes will become effective on the date determined by MR or MCCS, normally 30 days after approval. Changes will be done on an accommodation basis only, with the understanding that no legal obligation is imposed on MR or MCCS for failure to make payment to the new payee/address.

(b) Any request by the Contractor to change the name shown on the contract or to delegate its obligation under the contract must be sent to the Contracting Officer.

(8) Any questions or inquiries concerning invoice payments should be directed to the MR or MCCS paying office designated on the contract or purchase/delivery order.

(9) Any interest penalties due to Contractors will be computed in accordance with the Prompt Payment Act, 31 U.S.C. 3901-3906, as amended.

WITHHOLDING OF FUNDS (GPC-023, NOV 2007).

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 Davis-Bacon 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 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.

DISPUTES (MCX - EXCHANGE) (GPC-024-MCX, NOV 2007)

a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract will be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause.

c. Contractor must submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. The request must specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

"I certify that this request and any ensuing claim are made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that any amount

requested accurately reflects the amount for which Contractor believes MR or MCCA is liable.

(Signature of Individual Authorized to Bind Contractor)"

(NOTE: SUBMISSION OF FALSE CLAIMS IS A VIOLATION OF FEDERAL LAW AND MAY RESULT IN CIVIL AND OR CRIMINAL PENALTIES.)

d. Contractor's request for payment of money or other relief is not a "claim" until:

(1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,

(2) A dispute arises between the parties after a reasonable time for review and disposition, and

(3) Contractor requests the Contracting Officer to issue a final decision.

e. Contractor's request for a contract modification or for relief that is discretionary with the Contracting Officer will not be considered a "claim."

f. All disputed claims relating to this contract will be decided by the Contracting Officer, who will issue a written Final Decision and mail or otherwise furnish a copy thereof to Contractor. The Contracting Officer's decision will be final and conclusive unless:

(1) Within 90 days from the date of Contractor's receipt of the Contracting Officer's Final Decision, Contractor mails or otherwise furnishes the Contracting Officer a written appeal (two copies) addressed to the Armed Services Board of Contract Appeals (ASBCA); or

(2) Within 12 months from the date of Contractor's receipt of the Contracting Officer's Final Decision, Contractor brings an action in the United States Court of Federal Claims.

g. The decision of the ASBCA is final and conclusive except:

(1) Contractor may appeal such a decision to the United States Court of Appeals for the Federal Circuit within 120 days of receipt of a copy of the decision of the ASBCA.

(2) MCCA may transmit the decision of the ASBCA to the United States Court of Appeals for the Federal Circuit for judicial review within 120 days from the date of MCCA's receipt of a copy of the decision of the ASBCA.

(3) ASBCA decisions made under the Board's small claims (expedited) procedures (\$50,000 or less) may be set aside only in case of fraud. In all other cases, the ASBCA decisions on questions of fact may be set aside only where the decisions are fraudulent, arbitrary, capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decisions are not supported by substantial evidence. The decisions of the ASBCA on any questions of law will not be final or conclusive as to the United States Court of Appeals for the Federal Circuit.

h. Pending final resolution on any request for relief, disputed claim, appeal, or action, related to this contract, Contractor will proceed

diligently with the performance of this contract and will comply with the Contracting Officer's decisions.

i. If Contractor cannot support any part of its claim as a result of fraud or misrepresentation of fact, then, in addition to other remedies or penalties provided for by law, Contractor will pay MR or MCCA an amount equal to the unsupported part of the claim plus all MR or MCCA costs attributable to reviewing that part of the claim.

DISPUTES (MWR) (GPC-024-MWR, NOV 2007)

a. This contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). All disputes arising under or relating to this contract will be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause.

c. Contractor must submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. The request must specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

"I certify that this request and any ensuing claim are made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that any amount requested accurately reflects the amount for which Contractor believes MR or MCCA is liable.

(Signature of Individual Authorized to Bind Contractor)"

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(1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,

(2) A dispute arises between the parties after a reasonable time for review and disposition, and

(3) Contractor requests the Contracting Officer to issue a final decision.

e. Contractor's request for a contract modification or for relief that is discretionary with the Contracting Officer will not be considered a "claim."

f. All disputed claims relating to this contract will be decided by the Contracting Officer, who will issue a written Final Decision and mail or otherwise furnish a copy thereof to Contractor.

g. The Contractor may appeal the Contracting Officer's dispute decision by mailing or otherwise furnishing the written appeal (two copies) addressed to the Director, MR or, if applicable, Installation Commander, and furnishing a copy of the appeal to the Contracting Officer within 90 days of receipt of the Contracting Officer's decision. The decision of the Director, MR, or Installation Commander is final and conclusive and not subject to further appeal.

h. Pending final resolution on any request for relief, disputed claim, appeal, or action, related to this contract, Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decisions.

i. If Contractor cannot support any part of its claim as a result of fraud or misrepresentation of fact, then, in addition to other remedies or penalties provided for by law, Contractor will pay MR or MCCS an amount equal to the unsupported part of the claim plus all MR or MCCS costs attributable to reviewing that part of the claim.

DISPUTES CONCERNING LABOR STANDARDS (GPC-025, NOV 2007)

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.

CONTRACTOR LIABILITY (GPC-026, NOV 2007)

a. Except as set out specifically elsewhere in the contract, Contractor shall be liable for costs to MR, MCCS and other agencies of the United States associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and reprocurement costs.

b. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In such case Contractor shall provide prompt written notice to the Contracting Officer; the Contracting Officer, at his option may accept late, partial or substituted performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by Contractor.

TERMINATION (GPC-027, NOV 2007)

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

a. Termination for Default. MR and MCCS by written notice may terminate this contract in whole or in part for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages including the excess costs of reprocuring similar products

and services provided that if (i) the Contractor was not in default; or (ii) the Contractor's failure to perform is without his/her or his/her subContractor's control or negligence, the termination shall be deemed a "Termination for Convenience."

b. Termination for Convenience. MR and MCCS by written notice may terminate this contract in whole or in part when it is in the best interest of MR or MCCS. If this contract is for products and services and is so terminated, the Contractor shall be compensated in accordance with Federal Acquisition Regulation in effect on this contract's date. To the extent that this contract is for services and is so terminated, MR and MCCS shall be liable for payment as set forth in the payment provisions of this contract for services rendered prior to the effective date of termination.

c. Mutual Termination. This contract may be terminated by mutual agreement of both MR or MCCS and the Contractor at any time by contract modification.

CONTRACT TERMINATION - DEBARMENT (GPC-028, NOV 2007)

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

REQUESTS FOR MONETARY OR OTHER RELIEF (GPC-029, NOV 2007)

No claim by Contractor may be considered unless submitted in writing to the Contracting Officer within 90 days after termination of performance under the contract; however, this clause will not extend the period for filing claims which is further limited by another clause of the contract.

NOTIFICATION OF DEBARMENT OR SUSPENSION STATUS (GPC-030, NOV 2007)

The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any Federal Department or Agency, or upon receipt of a notice of proposed debarment from another DoD Agency, during the performance of this contract.

PROTECTING THE MR OR MCCS'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT (GPC-031, NOV 2007)

a. The Government suspends or debars Contractors to protect the Government/MR or MCCS's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

b. The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

c. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and refer to <http://epls.arnet.gov>). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

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

EQUAL EMPLOYMENT OPPORTUNITY (GPC-032, NOV 2007)

a. The Contractor agrees to comply with regulations of the Department of Labor contained in Title 41, Code of Federal Regulations, Chapter 60, which are incorporated herein by reference.

b. A contract award in the amount of \$10,000 or more shall not be made unless the Contractor, and each first-tier subcontractor which will receive a subcontract of \$10,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (GPC-033, NOV 2007)

If this contract equals or exceeds \$10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

AFFIRMATIVE ACTION AND NONDISCRIMINATION FOR WORKERS WITH DISABILITIES GPC-034, NOV 2007)

If the contract amount equals or exceeds \$10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulations, Part 60-741, which are incorporated herein by reference.

CONVICT LABOR (GPC-035, NOV 2007)

Except as provided in 48 CFR 5222-3, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment.

DRUG-FREE WORK PLACE (GPC-036, NOV 2007)

To the extent applicable, the Contractor will comply with the requirements of the Drug Free Workplace Act of 1988 (41 USC sec. 701, Pub. L. 100-690, as amended).

ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION (GPC-037, NOV 2007)

If this contract is performed in whole or in part on premises owned or under the control of the United States Government, MR, and or the MCCS, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the contract under the "Termination For Default" clause.

ENVIRONMENTAL PROTECTION (GPC-038, NOV 2007)

The Contractor will comply with all applicable Environmental Protection laws and regulations.

PERSONAL IDENTIFICATION OF CONTRACTOR PERSONNEL (GPC-039, NOV 2007)

Contractor and any subcontractors shall be required to comply with applicable MR or MCCS identity verification procedures, installation access requirements, and security clearance policies.

RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (GPC-040, MAR 2009)

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

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

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

RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (GPC-040, NOV 2007)

a. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's

implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

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

INSPECTION OF CONSTRUCTION (GPC-041, NOV 2007)

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

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

c. MR or MCCS inspections and tests are for the sole benefit of the MR or MCCS and do not-

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

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

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the MR or MCCS after acceptance of the completed work under paragraph (i) below.

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

e. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonable needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The MR or MCCS may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The MR or MCCS shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

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

LIQUIDATED DAMAGES-CONSTRUCTION (GPC-042, NOV 2007)

a. If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the MR or MCCS in the amount of [Contracting Officer insert amount] for each calendar day of delay until the work is completed or accepted.

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

COVENANT AGAINST CONTINGENT FEES (GPC-043, NOV 2007)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the MR or MCCS shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK (GPC-044, NOV 2007)

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

TIME EXTENSIONS (GPC-045, NOV 2007)

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

NOTICE TO THE MR OR MCCS OF LABOR DISPUTES (GPC-046, NOV 2007)

a. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

b. The Contractor agrees to insert the substance of this clause, including this paragraph b., in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by an actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (GPC-047, NOV 2007)

a. Overtime requirements. No Contractor or subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any work week unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

b. Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph a. of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the MR or MCCA. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

c. Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

d. Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the MR or MCCA until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph d.(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

e. Subcontracts. The Contractor shall insert the provisions set forth in paragraphs a. through d. of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any

subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs a. through d. of this clause.

DAVIS-BACON ACT (GPC-048, NOV 2007)

a. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph d. of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph b. of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore 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.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

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

classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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

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

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

PAYROLLS AND BASIC RECORDS (GPC-049, NOV 2007)

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 section 1(b)(2)(B) of the Davis-Bacon Act), 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 Davis-Bacon Act, 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 section 1(b)(2)(B) of the Davis-Bacon Act, 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. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(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; 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.

APPRENTICES AND TRAINEES (GPC-050, NOV 2007)

a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in

his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. 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. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, 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. 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. 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. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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. 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. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration 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. In the event the Employment and Training Administration 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.

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (GPC-051, NOV 2007)

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

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (GPC-052, NOV 2007)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

CERTIFICATION OF ELIGIBILITY (GPC-053, NOV 2007)

a. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government or MR or MCCA contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government or MR or MCCA contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

PROHIBITION OF SEGREGATED FACILITIES (GPC-054, NOV 2007)

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

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

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

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (GPC-055, NOV 2007)

a. Definitions. As used in this clause-

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

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

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

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

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

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

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

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

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

c. If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

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

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

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

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

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

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

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

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including

circulation of solicitations to minority and female contractor associations and other business associations.

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

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

(1) Actively participates in the group;

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

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

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

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

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

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

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

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

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

n. The Contractor shall designate a responsible official to-

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

(2) Submit reports as may be required by the Government/MR or MCCS; and

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

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

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (GPC-056, NOV 2007)

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

PATENT INDEMNITY-CONSTRUCTION CONTRACTS (GPC-057, NOV 2007)

Except as otherwise provided, the Contractor agrees to indemnify the Government/MR or MCCS and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C.181) arising out of performing this contract or out of the use or disposal by or for the account of the Government/MR or MCCS of supplies furnished or work performed under this contract.

WORKERS' COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (GPC-058, NOV 2007)

a. This paragraph applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to workers' compensation insurance under the Defense Base Act (42 U.S.C. 1651, et seq.). On behalf of employees for whom the applicability of the Defense Base Act has been waived, the Contractor shall-

(1) provide, before commencing performance under this contract, at least that workers' compensation insurance or the equivalent as the laws of the country of which these employees are nationals may require, and

(2) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act would apply but for the waiver, a clause similar to this

paragraph a. (including this sentence) imposing upon those subcontractors this requirement to provide such workers' compensation insurance coverage.

b. This paragraph applies if the Contractor or any subcontractor under this contract employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act (42 U.S.C. 1701, et seq.). On behalf of employees for whom the applicability of the Defense Base Act (and hence that of the War Hazards Compensation Act) has been waived, the Contractor shall, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., the definition of war-hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by workers' compensation insurance or the equivalent. Unless the Contractor elects to assume directly the liability to subcontractor employees created by this clause, the Contractor shall insert, in all subcontracts under this contract to which the War Hazards Compensation Act would apply but for the waiver, a clause similar to this paragraph b. (including this sentence) imposing upon those subcontractors this requirement to provide war-hazard benefits.

PERFORMANCE AND PAYMENT BOND PROTECTION UNDER \$100,000 (ALTERNATIVE PAYMENT PROTECTIONS) (GPC-059, APR 2008)

a. The Contractor shall submit one of the following payment protections:

b. The amount of the payment protection shall be 100 percent of the contract price.

c. The submission of the payment protection is required within _____ days of contract award.

d. The payment protection shall provide protection for the full contract performance period plus a one-year period.

e. Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

f. When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

ALTERNATIVE PAYMENT PROTECTIONS (GPC-059, NOV 2007)

a. The Contractor shall submit one of the following payment protections:

b. The amount of the payment protection shall be 100 percent of the contract price.

c. The submission of the payment protection is required within _____ days of contract award.

d. The payment protection shall provide protection for the full contract performance period plus a one-year period.

e. Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

f. When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION (GPC-060, NOV 2007)

a. Definitions. As used in this clause—
"Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

b. Within ten (10) calendar days after the Contractor receives notification of contract award, the Contractor shall obtain and submit to the Contracting Officer two (2) bonds (namely "Performance" and "Payment" Bonds, each with good and sufficient surety or sureties acceptable to the MR or M CCS).

c. If the contractor, upon acceptance of its bid or proposal by the MR or M CCS within the period specified for acceptance, fails to execute all contractual documents or give performance and payment bonds as required by the contract within the time specified, the Contracting Officer may terminate the contract for default.

d. The MR or M CCS requires performance and payment bonds for any construction contract exceeding \$100,000 unless an applicable waiver applies. The Contractor shall furnish to the MR or M CCS a Performance Bond (Standard Form 25) and a Payment Bond (Standard Form 25-A) within 10 days after award of contract before receiving a Notice to Proceed with the work or being allowed to start work. The Bonds shall include a statement that states that "The term United States of America, as set forth in this bond form shall mean the United States Marine Corps, Personal and Family Readiness Division (MR) or Marine Corps Community Services (M CCS) which is a party to this contract." The penal sums of such bonds shall be as follows:

(1) Performance Bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection.

(i) The MR or MCCS may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The MR or MCCS may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

e. Corporate sureties offered for bonds furnished with your awarded contract must appear on the list contained in the Department of the Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." Treasury Circular 570 is published in the Federal Register, is available at <http://fms.treas.gov/c570/c570.html#certified> or may be obtained from the:

U.S. Department of Treasury Financial
Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227

The penal amount of the bond should not exceed the surety's underwriting limit, the bond will be acceptable only if (i) the amount which exceeds the specified limit is coinsured or reinsured and (ii) the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

f. Individual sureties will not be acceptable under the requirements of this contract.

g. Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (GPC-061, NOV 2007)

a. "Materials," as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

b. If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

c. At the time specified in paragraph d. of this section, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the

Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

d. If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph c. above shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

e. The certified statements to be furnished pursuant to paragraph c. above shall be in the following form:

I hereby certify that during the period _____ to _____ [insert dates], _____ [insert name of Contractor or subcontractor] paid North Carolina State and local sales and use taxes aggregating \$ _____ (State) and \$ _____ (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by _____ [insert name of Contractor or subcontractor] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (GPC-062, NOV 2007)

a. The MR or MCCS shall pay the contract price as provided in this contract.

b. The MR or MCCS may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site may also be taken into consideration if--

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

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

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

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

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

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

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

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

(Name)

(Title)

(Date)

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

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

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

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

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

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

f. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the MR or MCCS, but this shall not be construed as-

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

(2) Waiving the right of the MR or MCCS to require the fulfillment of all of the terms of the contract.

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

h. The MR or MCCS shall pay the amount due the Contractor under this contract after-

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the MR or MCCS arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment clause of this contract.

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

PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (GPC-063, NOV 2007)

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

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

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

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

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

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

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after MR or MCCA acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

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

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

(i) Name and address of the Contractor.

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

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

(iv) Description of work or services performed.

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

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

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

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

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

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions a.(3)(i) through a.(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal

holiday when Federal Government offices are closed and Government/MR or MCCS business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

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

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

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

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

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

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

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

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

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

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

(6) Additional interest penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

subject to the overall limits on the additional penalty specified in subdivision a.(6)(iii)(A) of this clause.

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

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

b. Contract financing payments—

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

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

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

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

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

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

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

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

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

to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

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

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

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

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

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

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

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

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

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

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

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

(i) Make such payment within-

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

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

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

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

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

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

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

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

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

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

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

e. Third-party deficiency reports-

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

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

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

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

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

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest

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

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

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

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

i. Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph c. of this clause does not constitute a dispute to which the MR or MCCS is a party. The MR or MCCS may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

j. Preservation of prime-subcontractor rights. Except as provided in paragraph i. of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

k. Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph c. of this clause shall not be construed to be an obligation of the MR or MCCS for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER (GPC-064, NOV 2007)

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

b. Exceptions to the EFT are as follows:

(1) Contracts awarded to companies located in OCONUS

(2) Contracts denominated or paid in other than US currency

(3) Classified contracts when such payments would compromise national security

(4) Contracts executed by deployed Contracting Officers in the course of military operations

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

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

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

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

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

d. Mandatory submission of Contractor's EFT information.

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

(i) Name and address of the Contractor
(ii) Nine-digit Routing Transit Number of the Contractor's financial agent
(iii) Contractor's account number, title of account, and the type of account (checking or savings)

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

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

f. Suspension of payment.

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

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

g. Liability for uncompleted or erroneous transfers.

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

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

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

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

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

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

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

PAYMENT BY THIRD PARTY (GPC-065, NOV 2007)

a. General. The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the MR or MCCS, in accordance with the terms of this clause. The third party and, if applicable, the particular Government-wide commercial purchase card to be used are identified elsewhere in this contract.

b. Contractor payment request. In accordance with the clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the MR or MCCS account with the third party, at the time and for the amount due in accordance with the terms of this contract.

c. Payment. The Contractor and the third party shall agree that all payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the MR or MCCS and are not

subject to the Prompt Payment Act or any implementation thereof in this contract.

d. Documentation. Documentation of each charge against the MR or MCCS's account shall be provided to the Contracting Officer upon request.

e. Assignment of claims. Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

f. Other payment terms. The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, which is not provided in the third party agreement referenced in paragraph c. of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

DIFFERING SITE CONDITIONS (GPC-066, NOV 2007)

a. The contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.

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

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

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

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (GPC-067, NOV 2007)

a. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work, or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably

ascertainable from an inspection of the site, including all exploratory work done by the MR or M CCS, as well as from drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the MR or M CCS.

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

MATERIAL AND WORKMANSHIP (GPC-068, NOV 2007)

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

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

SUPERINTENDENCE BY THE CONTRACTOR (GPC-069, NOV 2007)

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

OTHER CONTRACTS (GPC-070, NOV 2007)

The MR or M CCS or the Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with MR or M CCS and Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work,

heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by MR or MCCS or Government employees.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (GPC-071, NOV 2007)

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

b. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

OPERATIONS AND STORAGE AREAS (GPC-072, NOV 2007)

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

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

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

USE AND POSSESSION PRIOR TO COMPLETION (GPC-073, NOV 2007)

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

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

CLEANING UP (GPC-074, NOV 2007)

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

AVAILABILITY AND USE OF UTILITY SERVICES (GPC-075, NOV 2007)

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

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

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

SCHEDULES FOR CONSTRUCTION CONTRACTS (GPC-076, NOV 2007)

a. The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a

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

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

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

LAYOUT OF WORK (GPC-077, NOV 2007)

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

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (GPC-078, NOV 2007)

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

expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

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

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

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

e. If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government/MR or MCCA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with f. below.

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

g. The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. The Contracting Officer will retain three sets (unless otherwise indicated) of all shop drawings and return the other set to the Contractor.

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

PRECONSTRUCTION CONFERENCE (GPC-079, NOV 2007)

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

BANKRUPTCY (GPC-080, NOV 2007)

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

SUSPENSION OF WORK (GPC-081, NOV 2007)

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

b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified) an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

c. A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date the final payment under the contract.

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (GPC-082, NOV 2007)

a. Definitions. As used in this clause-

"Commercial item," has the meaning contained in the clause *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 as components of items to be supplied under this contract.

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

(1) Equal Employment Opportunity (E.O.11246);

(2) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C.4212(a)); and

(3) _____, Affirmative Action and Nondiscrimination for Workers with Disabilities (29 U.S.C.793).

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

MR OR MCCS PROPERTY (GPC-083, NOV 2007)

a. The Contractor shall sign a receipt for any property furnished by the MR or MCCS and upon expiration of this contract shall return such property to the MR or MCCS in the same condition as when received, except for fair wear and tear.

b. Such property will be supplied to the Contractor in a condition suitable for the intended use and in a timely manner.

c. If property is received in a less than functional state or in a time frame which would delay Contractor's performance, the Contractor shall, upon receipt of property, notify the Contracting Officer, detailing the facts, and as directed by the Contracting Officer and at MR or MCCS expense, either repair, modify, return or otherwise dispose of the property. In the case of an untimely delivery by the MR or MCCS, the Contracting Officer shall make a determination of the delay, if any, caused by the MR or MCCS; the contracting officer shall make an equitable adjustment in accordance with paragraph f.

d. The Contracting Officer shall, upon written notification from the Contractor of any such discrepancies, make an equitable adjustment from such expenses incurred by the contractor.

e. After completion of the contract, if any such property is lost, damaged or destroyed by the Contractor, the MR or MCCS shall be paid the cost of repairs of damages or the fair market value of the property as determined by the Contracting Officer.

f. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the MR or MCCS. The right to any equitable adjustment shall be the Contractor's exclusive remedy. The MR or MCCS shall not be liable for breach of contract for-

- (1) Any delay in delivery of MR or MCCA furnished property;
- (2) Delivery of MR or MCCA furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of MR or MCCA furnished property; or
- (4) Failure to repair or replace MR or MCCA property for which the MR or MCCA is responsible.

WARRANTY OF CONSTRUCTION (GPC-084, NOV 2007)

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

b. This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the MR or MCCA 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 MR or MCCA takes possession.

c. The Contractor shall remedy at the Contractor's expense any damage to MR or MCCA or Government owned or controlled real or personal property, when that damage is the result of-

- (1) The Contractor's failure to conform to contract requirements;
- or
- (2) Any defect of equipment, material, workmanship, or design furnished.

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

e. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discover 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 MR or MCCA 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 MR or MCCA if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the MR or MCCA, if directed by the Contracting Officer.

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

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

CLAUSES INCORPORATED BY REFERENCE (GPC-085, NOV 2007)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text.

DEFAULT (FIXED-PRICE CONSTRUCTION) (GPC-086, NOV 2007)

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

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

(1) The delay in completing the work arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the MR or MCCS and /or Government, in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the MR or MCCS or with the government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

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

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

PROTEST AFTER AWARD (GPC-087, NOV 2007)

a. Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either-

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default or the Termination clause of this contract.

b. If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

e. The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

f. If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other

remedy available, and pursuant to the requirements of [Subpart 32.6](#), the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

Alternate I (June 1985). As prescribed in [33.106\(b\)](#), substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination there of, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (GPC-088, NOV 2007)

United States law will apply to resolve any claim of breach of this contract.

COMPUTER GENERATED FORMS (GPC-089, NOV 2007)

a. Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

b. Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

c. If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (GPC-090, NOV 2007)

a. The Contractor agrees to comply with the clauses in this paragraph (a), which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items by NAFIs (*Contracting Officer shall check as appropriate*):

- ___ (1) ___, Prohibition of Segregated Facilities.
- ___ (2) ___, Equal Opportunity (E.O.11246).
- ___ (3) ___, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212).
- ___ (4) ___. Affirmative Action for Workers with Disabilities (29 U.S.C.793).
- ___ (5) ___. Buy American Act—Balance of Payments Program—Supplies (41 U.S.C.10a-d).
- ___ (6) ___. Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.
 - ___ . Alternate I of above.
 - ___ . Alternate II of above.
- ___ (7) ___. Trade Agreements Act.

- ___ (8) ____. Restriction on Certain Foreign Purchases.
- ___ (9) ____. Mandatory Information on Electronic Funds Transfer.

b. The Contractor agrees to comply with the clauses in this paragraph (b), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items by NAFIs, or components (*Contracting Officer shall check as appropriate*):

- ___ (1) ____. Service Contract Act of 1965, As Amended (41 U.S.C.351, et seq.).
- ___ (2) ____. Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C.206 and 41 U.S.C.351, et seq.).
- ___ (3) ____. Fair Labor Standards Act and Service Contract Act-Price Adjustment (29 U.S.C.206 and 41 U.S.C.351, et seq.).

WALSH-HEALEY PUBLIC CONTRACTS ACT (GPC-091, NOV 2007)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

a. All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

b. All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-203.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

BUY AMERICAN ACT - CONSTRUCTION MATERIALS (GPC-092, NOV 2007)

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 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; 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.

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

b. *Domestic preference.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. 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 the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the 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 Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph b.(3)(i) of this clause.

(3) Unless the 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)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

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