

NOTICE FOR FILING AGENCY PROTESTS

It is the policy of the Coast Guard to issue solicitations and make contract awards in a fair and timely manner. The Ombudsman Program for Agency Protests (OPAP) was established to investigate agency protest issues and resolve them without expensive and time-consuming litigation. OPAP is an independent reviewing authority that is empowered to grant a prevailing protester essentially the same relief as the General Accounting Office (GAO).

Interested parties are encouraged to seek resolution of their concerns within the Coast Guard as an Alternative Dispute Resolution (ADR) forum, rather than filing a protest with the GAO or some external forum. Interested parties may seek resolution of their concerns **informally** or opt to file a **formal** agency protest with the contracting officer or Ombudsman.

Informal forum with the Ombudsman. Interested parties who believe that a Coast Guard procurement is unfair or otherwise defective should first direct their concerns to the cognizant contracting officer. If the contracting officer is unable to satisfy the concerns, the interested party is encouraged to contact the Coast Guard Ombudsman for Agency Protests. Under this informal process, the agency is not required to suspend contract award performance. Use of an informal forum does not suspend any time requirement for filing a protest with the agency or other forum. In order to ensure a timely response, interested parties should provide the following information to the Ombudsman: solicitation/contract number, contracting office, contracting officer, and solicitation closing date (if applicable).

Formal Agency Protest with the Ombudsman. Prior to submitting a formal agency protest, protesters must first use their best efforts to resolve their concerns with the contracting officer through open and frank discussions. If the protester's concerns are unresolved, an independent review is available by the Ombudsman. The protester may file a formal agency protest to either the contracting officer or as an alternative to that, the Ombudsman under the OPAP program. Contract award or performance will be suspended during the protest period unless contract award or performance is justified, in writing, for urgent and compelling reasons or is determined in writing to be in the best interest of the Government. The agency's goal is to resolve protests in less than 35 calendar days from the date of filing. Protests shall include the information set forth at FAR 33.103(d)(2). If the protester fails to submit the required information, resolution of the protest may be delayed or the protest may be dismissed. This will not preclude re-filing of the protest to meet the requirement. To be timely, protests must be filed within the period specified in FAR 33.103(e). **Formal** protests filed under the OPAP program should be forwarded to the address below:

Commandant (G-A)
U.S. Coast Guard Headquarters
Acquisition Planning and Performance Measurement
1900 Half St. SW, JR11-0203
Washington, DC 20593
Telephone: (202) 372-3695
Fax: (202) 475-3904

SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>		1. SOLICITATION NO. HSCG47-10-R-3EFK13	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED	PAGE OF PAGES 1 of 37
IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.					
4. CONTRACT NO. HSCG47-10-C-3EFK13		5. REQUISITION/PURCHASE REQUEST NO. CONSTRUCTION		6. PROJECT NO.	
7. ISSUED BY CONTRACTING DIVISION, USCG FACILITIES DESIGN & CONSTRUCTION CENTER 5505 ROBIN HOOD ROAD, SUITE K NORFOLK, VIRGINIA 23513-2431		CODE :		8. ADDRESS OFFER TO CONTRACTING DIVISION, USCG FACILITIES DESIGN & CONSTRUCTION CENTER (ATLANTIC) 5505 ROBIN HOOD ROAD, SUITE K NORFOLK, VIRGINIA 23513-2431	
9. FOR INFORMATION CALL: →		A. NAME DONNA MILLER, Contracting Officer		B. TELEPHONE NO. (include area code) (NO COLLECT CALLS) (757) 852-3422 FAX (757) 852-3495	
SOLICITATION					
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".					
10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (<i>Title, identifying no., date</i>): DESIGN/BUILD FACILITIES RECAPITALIZATION AND SITE CONSOLIDATION, PHASE 1, SECTOR BUFFALO, NY					
Provide all materials and services necessary to perform all work in accordance with applicable clauses, provisions, special contract requirements, specifications and drawings, as set forth in Section A, Page 3.					
THIS IS A COMPETITIVE 8(A) SET-ASIDE.					
Effective October 1, 2003, all Coast Guard vendors must be registered in the Central Contractor Registration (CCR) database PRIOR TO AWARD in order to receive payments by Electronic Funds Transfer. For more information or to register online, visit the CCR website: http://www.ccr.gov or call the U. S. Coast Guard Finance Center Customer Service line at (757) 523-6940.					
NAICS CODE: 236210 SIZE STANDARD: \$33.5 MILLION					
CAUTION TO BIDDERS: Bidders are urged to visit the site and take such steps as may be reasonably necessary to ascertain the nature and exact location of the work. Failure to visit the site for this purpose does not relieve bidders from the responsibility for estimating properly the difficulty or cost of successfully performing the work.					
11. The Contractor shall begin performance within <u>14</u> calendar days and complete it within <u>456</u> calendar days after receiving <input checked="" type="checkbox"/> award, <input type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. (See SECTION F)					
12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "Yes", indicate within how many calendar days after award in Item 12B.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Performance and Payment bonds must be approved prior to commencement of work (See Section L)					12B. CALENDAR DAYS 10
13. ADDITIONAL SOLICITATION REQUIREMENTS:					
A. Proposals in original and <u>one</u> copy to perform the work required are due at the place specified in Item 8 by <u>4:30 PM.</u> (<i>hour</i>) local time _____ (<i>date</i>). If this is a sealed bid solicitation, offers, will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.					
B. An offer guarantee <u> X </u> is, is not required.					
C. All offers are subjects to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.					
D. Offers providing less than <u>60</u> calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.					

OFFER (Must be fully completed by offeror)		HSCG47-10-R-3EFK13	PAGE 2 OF 37
14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)		15. TELEPHONE NO. (Include area code)	
		16. REMITTANCE ADDRESS (Include only if different than Item 14)	
DUNS NUMBER: (Must be filled in)			
CODE	FACILITY CODE		
17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if the offer is accepted by the Government in writing within ____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)			
AMOUNTS →	SEE SECTION B		
18. The offeror agrees to furnish any required performance and payment bonds.			
19. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)			
AMENDMENT NO.			
DATE			
20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)		20B. SIGNATURE	20C. OFFER DATE
AWARD (To be completed by Government)			
21. ITEM ACCEPTED:			
CONTRACT COMPLETION DATE:			
22. AMOUNT		23. ACCOUNTING AND APPROPRIATION DATA	
24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 COPIES UNLESS OTHERWISE SPECIFIED) →		ITEM 26	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C.2304(c) (5) <input type="checkbox"/> 41 U.S.C.253(c) ()
26. ADMINISTERED BY CONTRACTING DIVISION, USCG FACILITIES DESIGN & CONSTRUCTION CENTER 5505 ROBIN HOOD ROAD, SUITE K NORFOLK, VIRGINIA 23513-2431		CODE	27. PAYMENT WILL BE MADE BY SAME AS BLOCK NO. 26
CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE			
<input type="checkbox"/> 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 4 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.		<input type="checkbox"/> 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.	
30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)		31A. NAME OF CONTRACTING OFFICER (Type or print)	
30B. SIGNATURE	30C. DATE	31B. UNITED STATES OF AMERICA BY	31C. AWARD DATE

SECTION A
 SOLICITATION/CONTRACT FORM

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The estimated cost of this project ranges between \$4,500,000.00 and \$5,000,000.00.

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

BASE BID ITEM

Provide all services and materials necessary to design and construct Phase 1 of the Facilities Recapitalization and Site Consolidation for U. S. Coast Guard Sector Buffalo. The work shall be performed in accordance with Specification No. 09-I01015 and Drawing No. A09-L01015, Sheets 1 through 5.

Design Cost \$ _____

Construction Cost \$ _____

BASE BID ITEM \$ _____

OPTIONAL BID ITEM 0001

Provide all services and materials necessary to design and construct to raise the new parking area 1 foot above the 100 year flood. This will improve importing 15,000 CY of structural fill and includes applying compacting and grading said fill in 6' lifts to 90% maximum density (ASTM-D 1557) utilizing acceptable industry standards for such earthwork operations. The work shall be performed in accordance with Specification No. 09-I01015 and Drawing No. A09-L01015, Sheets 1 through 5.

Design Cost \$ _____

Construction Cost \$ _____

OPTIONAL BID ITEM 0001 \$ _____

TOTAL BASE BID ITEM AND OPTIONAL BID ITEM 0001

Design Cost \$ _____

Construction Cost \$ _____

NOTE: The Base Bid and Optional Bid Item 0001 shall be deemed to include all costs required for the specified work to be completed in accordance with the drawings and specifications.

The proposal will be evaluated based on the total sum of Base Bid Item and Optional Bid Item 0001 in accordance with FAR clause 52.217-4 "Evaluation of Options Exercised at Time of Contract Award" or 52.217-5 entitled "Evaluation of Options". Evaluation of the options shall not obligate the Government to exercise the options.

Optional Bid Item 0001, if exercised by the Government, will be exercised within 60 days after award or at time of award. The contractor will be notified in writing should the Optional Bid Item 0001 be exercised. If exercised, the Optional Bid Item 0001 shall be completed within the established period in accordance with FAR Clause 52.211-10 "Commencement, Prosecution, and Completion of Work (APR 1984) (See Section "F").

CAUTION: Proposals will be analyzed to determine whether they are unbalanced in regards to the bid price for the basic bid item in relationship to the bid price for the options. Unbalanced bids will be rejected as nonresponsive.

SECTION C

DESCRIPTION/SPECIFICATIONS

SECTION "C" IS NOT APPLICABLE. SEE SECTION "J".

SECTION D

PACKAGING AND MARKING

SECTION "D" IS NOT APPLICABLE.

SECTION E

INSPECTION AND ACCEPTANCE

52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

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

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

(c) Government inspections and tests are for the sole benefit of the Government and do not--

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or
- (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

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

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

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

(g) If the Contractor does not promptly replace or correct rejected work, the Government may--

- (1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
- (2) Terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the

Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

SECTION F

DELIVERIES OR PERFORMANCE

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

(a) The Contractor shall be required to (a) commence work under this contract within 14 calendar days after the date of award, (b) prosecute the work diligently, and (c) complete the entire work ready for use within 456 calendar days after receipt of the notice of award. The time stated for completion shall include final cleanup of the premises.

(b) The Government reserves its right to award any or all of the Optional Bid Items at time of contract award or within 60 calendar days after contract award. The Contractor shall be required to (a) commence work under any or all Optional Bid Items within 14 calendar days after award of Optional Bid Items, (b) prosecute the work diligently, and (c) complete the entire work ready for use within the original contract performance period of **456** calendar days.

52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

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

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

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

SECTION G

CONTRACT ADMINISTRATION DATA

G.1. INSTRUCTIONS FOR SUBMITTING MATERIAL APPROVALS

All submittals shall be submitted as specified in Specification 09-L01015.

G.2. AUTHORIZED REPRESENTATIVES OF THE CONTRACTING OFFICER

Mr. Eric Hanson is the Contracting Officer's Technical Representative for the purpose of day-to-day technical administration/inspection of all work under the contract. This includes, but is not limited to, administration of progress, approval of submittals, final inspection and providing technical assistance when required. The contractor is cautioned that in no instance is the above named person authorized to approve any changes which will involve the quantity, quality, price or performance of the contract.

Mr. Dan Meyers is the representative of the Contracting Officer for the purpose of inspection of work under the contract. The Contractor is cautioned that in no instance is the above named person authorized to approve any changes, which will involve the quantity, quality, price, or performance of the contract.

Mrs. Donna Miller of the Contracting Division, U.S. Coast Guard, Facilities Design & Construction Center 5505 Robin Hood Road, Suite K, Norfolk, VA 23513-2431, telephone number (757) 852-3422, is the Contracting Officer/Negotiator for this contract. All matters related to performance of this contract shall be coordinated through her.

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (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 Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of -

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

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

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall -

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

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

(k) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

H.2 PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes Clause or any other provision of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulations, as applicable, which are in effect on the date of this contract.

H.3 WORK OUTSIDE REGULAR WORK HOURS

If the contractor desires to perform work under this contract outside regular work hours or on Saturdays, Sundays or holidays, he shall apply, in writing, to the Contracting Officer no less than 10 calendar days prior to the planned start of such work. Regular work hours are, for the purpose of this clause, those hours the activity or Command where the work is to be performed normally works on a day-by-day basis. Application by the Contractor does not imply consent by the Government. Each application will be considered, and a decision made, on the potential benefit of permitting such work. Approval of a Contractor's application under this clause will be, unless otherwise agreed in writing, at no additional cost to the Government.

H.4 SAFETY AND HEALTH

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the Schedule of the contract, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor is subject to (i) all applicable Federal, state and local laws, regulations, ordinances, codes and orders relating to safety and health in effect on the date of this contract; (ii) shall comply with all pertinent provisions of the latest version of the U. S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of this contract; and (iii) shall comply with the Safety and Health Standards, specifications and issuances, reporting requirements, and provisions as set forth in the Schedule of the contract.

(b) Further, the Contractor shall take or cause to be taken such other safety and health measures as the Contracting Officer shall direct. To the extent that the Contractor is entitled to an equitable adjustment under the terms and conditions of this contract, or any other obligations of the parties, such equitable adjustment shall be determined pursuant to the procedures of the clause of this contract entitled "Changes"; provided, that no adjustment shall be made under this clause for any change for which an equitable adjustment is expressly provided under any other provision of this contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or his representative, any accident or incident or exposure resulting in fatality, disabling occupational injury or occupational disease or contamination of property beyond stated acceptable threshold limits set forth in the Schedule of the contract, or property loss of \$10,000 or more arising out of work performed under this contract; provided, however, the Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the Contractor shall comply with any illness, incident and injury experience reporting requirement set forth in the Schedule of the contract. The Contractor will investigate all such work related incidents or accidents to persons and property to the extent necessary to positively conclude what cause or causes resulted in said accident or incident, and furnish the Contracting Officer with a report, in such form as the Contracting Officer may require, of the investigative findings, together with proposed and/or completed corrective actions.

(d) (1) The Contracting Officer may, from time to time, notify the Contractor in writing of any noncompliance with the provisions of this clause and may specify corrective actions to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with (d)(1) above, the Contracting Officer may invoke the provisions of the clause in the contract entitled "Stop Work", or may invoke whatever other rights are available to the Government under the terms and conditions of this contract or at common law, to remedy such failure or refusal to institute prompt corrective action.

(e) The Contractor (or subcontractor or supplier) shall cause the substance of this clause including this paragraph (e) and any applicable Schedule Provisions, with appropriate changes of designations of the parties to be inserted in subcontracts of every tier which: (i) Amount to \$1,000,000 or more unless the Contracting Officer makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the Contractor, regardless of dollar amount, determines that hazardous materials or operations are involved.

(f) The Contractor agrees that authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed to determine the adequacy of the Contractor's safety and health measures under this clause.

H.5 WAGE RATES

If crafts or trades are required in the performance of this project for which no wage is listed in the Department of Labor Wage Decision (See Section J), the Contracting Officer shall be notified in writing. No work in unlisted crafts or trades will be permitted until a wage has been negotiated between the Contracting Officer and the Contractor.

H.6. REQUIRED INSURANCE

The contractor shall procure and maintain insurance during the entire period of his performance under this contract, in accordance with Federal Acquisition Regulation Clause No. 52.228-5, entitled "INSURANCE - WORK ON A GOVERNMENT INSTALLATION". (See Section I) FAR 28.307-2 states the following minimum amounts of liability:

(a) Workers' Compensation and Employer's Liability. Contractors are required to comply with applicable Federal and State worker's compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers. (See 28.305(c) for treatment of contracts subject to the Defense Base Act.)

(b) General Liability. (1) The contracting officer shall require bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(2) Property damage liability insurance shall be required only in special circumstances as determined by the agency.

(c) Automobile Liability. The Contracting Officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contracting Officer shall require aircraft public and passenger liability insurance. Coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) Vessel Liability. When contract performance involves use of vessels, Contracting Officer shall require, as determined by the agency, vessel collision liability and protection and indemnity liability insurance.

(f) Prior to commencement of work hereunder, the contractor shall furnish to the Contracting Officer a certificate or written statement of the above required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective until thirty (30) days after written notice thereof to the Contracting Officer. The contractor agrees to insert the substance of this clause, including this paragraph, in all subcontracts hereunder.

ATTENTION BIDDERS: IF THIS PROJECT INVOLVES WORK ON NAVIGABLE WATERS, LONGSHOREMEN'S AND HARBORWORKER'S COMPENSATION ACT (33 U.S.C. 901) IS APPLICABLE.

H.7. THIS IS AN 8(a) SET-ASIDE. See Section I, FAR Clause 52.219-8 "Utilization of Small Business Concerns (MAY 2004). The negotiation authority is 10 U.S.C. 2304(c)(5) and 15 U.S.C. 637(a).

H.8. COST OR PRICING DATA

Cost and pricing data shall be furnished in accordance with Section 15.4 of the Federal Acquisition Regulation (FAR).

H.9 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws.

H.10 52.211-12 LIQUIDATED DAMAGES - CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of **\$786.00** for each calendar day of delay until the work is completed or accepted.

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

H.11 CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION

10 U. S. C. 2323, Contract goals for small disadvantaged business and certain institutions of higher education, enacted by Public Law 103-355, requires submission of data on contracts and subcontracts awarded to small disadvantaged businesses, historically black colleges and universities, and minority institutions. The contractor agrees to submit, upon request from the contracting officer, information as may be required by the Government to meet reporting requirements set forth under 10 U. S. C. 2323.

H.12 CENTRAL CONTRACT REGISTRATION:

All Coast Guard vendors must be registered in the Central Contractor Registration (CCR) database **PRIOR TO AWARD** in order to receive payments by Electronic Funds Transfer. For more information or to register online, visit the CCR website: <http://www.ccr.gov> call the U. S. Coast Guard Finance Center Customer Service line at (757) 523-6940 or 1-800-564-5504.

H.13 ENGLISH

All communications, written, and oral between the contractor and the Government in connection with this contract shall be in the English Language, and any system of dimensions (English or Metric) shown shall be consistent with that used in the contract.

SECTION I

CONTRACT CLAUSES

- 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)
This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):
www.arnet.gov/far and <http://www.dhs.gov/xlibrary/assets/opnbiz/cpo-acquisition-regulation-0606.pdf>
and
<http://www.dhs.gov/xlibrary/assets/opnbiz/cpo-acquisition-manual-1206.pdf>
- 52.202-1 DEFINITIONS (JULY 2004)
- 52.203-3 GRATUITIES (APR 1984)
- 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)
- 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)
- 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)
- 52.204-1 APPROVAL OF CONTRACT (DEC 1989)
This contract is subject to the written approval of Chief of Contracting Division, Facilities Design and Construction Center (Atlantic) and shall not be binding until so approved.
- 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
- 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS (MAY 1999)
- 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008)
- 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)
- 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008)
- 52.215-2 AUDIT AND RECORDS -NEGOTIATION (MAR 2009)
- 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)
- 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)
- 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997)
- 52-215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)
- 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997)
- 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)
- 52.215-18 REVERSION OR ADJUSTMENTS OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
- 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
- 52.217-4 EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUN 1988)
- 52.217-5 EVALUATION OF OPTIONS (JUL 1990)
- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

- 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)
- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
 - (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for -
 - (1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS –
(JUNE 2003)

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

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

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

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

(c) Any award resulting from this solicitation will be made to the directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement*. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The _____ [*insert name of SBA's contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

Alternate III (NOV 2005)

**Class Deviation from the Federal Acquisition Regulation (FAR)
Subpart 19.8 and Part 52 regarding Section 8(a) Awards**

Determination and Findings

Under the authority granted by the Civilian Agency Acquisition Council (CAAC) Letter 98-3, Direct 8(a) Contracting, the Department of Homeland Security has authorized a class deviation from the Federal Acquisition Regulation (FAR) 52.219-11, 52.219-12, 52.219-17, and 52.219-18 to implement the "Partnership Agreement between the U.S. Small Business Administration and the Department of Homeland Security."

Findings

The FAR requires the procuring activities to issue a prime contract with the SBA, which in turn subcontracts performance of the contract to the 8(a) firm. The CAAC Letter 98-3 allows agencies that

have entered into the Partnership Agreement with SBA to award contracts directly to the 8(a) concerns. Since the affected regulations do not reflect the revised process permitted by the Partnership Agreement, the SBA and FAR regulations must be amended. The FAR will be amended following the promulgation of a SBA modification to their regulations. The DHS deviations to the FAR coverage to implement the 8(a) Partnership Agreement are attached to this Determination and Findings.

Determination

In accordance with FAR 1.404, I have issued this class deviation. Consultation and approval for this class deviation is granted under CAAC Letter 1998-03. This class deviation shall remain in effect until the SBA-DHS Partnership Agreement is rescinded or upon the effective date of a pertinent FAR change, whichever occurs first.

52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (APR 2009)

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

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardsttopics/>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to

complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it is, is not a small business concern under NAICS Code _____ assigned to contract number _____.

[Contractor to sign and date and insert authorized signer's name and title].

52.219-71 Section 8(a) Direct Awards (Deviation) (November 2005)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the Department of Homeland Security (DHS). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

[To be completed by Contracting Officer at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.

(2) to adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting.

52.222-3	CONVICT LABOR (JUNE 2003)
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JULY 2005)
52.222-6	DAVIS-BACON ACT (JULY 2005)
52.222-7	WITHHOLDING OF FUNDS (FEB 1988)
52.222-8	PAYROLLS AND BASIC RECORDS (DEVIATION)

(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 29 CFR 5.5(a)(3)(i), except that full social security numbers and home address shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e. g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submissions to the Contracting Officer.

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

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

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

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

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

52.222-9	APPRENTICES AND TRAINEES (JULY 2005)
52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
52.222-11	SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)
52.222-12	CONTRACT TERMINATION-DEBARMENT (FEB 1988)
52.222-13	COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)
52.222-14	DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
52.222-15	CERTIFICATION OF ELIGIBILITY (FEB 1988)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
52.222-26	EQUAL OPPORTUNITY (MAR 2007)

52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)
52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)
52.222-50	COMBATING TRAFFICKING IN PERSONS (FEB 2009)
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)
52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)
52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)
52.223-6	DRUG-FREE WORKPLACE (MAY 2001)
52.223-14	TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)
52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)
52.225-9	BUY AMERICAN ACT—CONSTRUCTION MATERIALS (FEB 2009)

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

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

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

(i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));

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

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products.

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

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

“Cost of components” means—

(3) 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

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

“Domestic construction material” means—

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

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

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

(ii) The construction material is a COTS item.

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

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

(b) Domestic preference.

(1) This clause implements the Buy American Act ([41U.S.C.10a - 10d](#)) by providing a preference for domestic construction material. In accordance with [41U.S.C.431](#), the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR [12.505\(a\)\(2\)](#)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to 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).]

52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS (FEB 2009)

(a) *Definitions*. “Commercially available off-the-shelf (COTS) item,” “construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause [52.225-9](#)).

(b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraph (c) and (d) of the clause at FAR [52.225-9](#) in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR [52.225-9](#).

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

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR [52.225-9](#), the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR [52.225-9](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR [52.225-9](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
52.225-19	CONTRACTOR PERSONNEL IN A DESIGNATED OPERATIONAL AREA OR
52.227-1	AUTHORIZATION AND CONSENT (DEC 2007)
52.227-2	NOTICES AND ASSISTANCE REGARDING PATENT & COPYRIGHT
	INFRINGEMENT (DEC 2007)
52.227-4	PATENT INDEMNITY - CONSTRUCTION CONTRACTS (DEC 2007)
52.228-1	BID GUARANTEE (SEPT 1996)
52.228-2	ADDITIONAL BOND SECURITY (OCT 1997)
52.228-5	INSURANCE - WORK ON A GOVERNMENT INSTALLATION (JAN 1997)
52.228-11	PLEDGES OF ASSETS (SEP 2009)
52.228-12	PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)
52.228-14	IRREVOCABLE LETTER OF CREDIT (DEC 1999)
52.228-15	PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (NOV 2006)
52.229-3	FEDERAL, STATE, AND LOCAL TAXES (APR 2003)
52.229-4	FEDERAL, STATE, AND LOCAL TAXES (STATE AND LOCAL ADJUSTMENTS)
	(APR 2003)
52.232-5	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEPT 2002)
52.232-17	INTEREST (OCT 2008)
52.232-23	ASSIGNMENT OF CLAIMS (JAN 1986)
52.232-27	PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (OCT 2008)
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR
	REGISTRATION (OCT 2003)
52.233-1	DISPUTES (JULY 2002) ALTERNATE I (DEC 1991)
52.233-2	SERVICE OF PROTEST (SEPT 2006)
52.233-3	PROTEST AFTER AWARD (AUG 1996)
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
52.236-2	DIFFERING SITE CONDITIONS (APR 1984)
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
52.236-5	MATERIAL AND WORKMANSHIP (APR 1984)
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)
52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
52.236-8	OTHER CONTRACTS (APR 1984)
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT,
	UTILITIES AND IMPROVEMENTS (APR 1984)
52.236-10	OPERATIONS AND STORAGE AREAS (APR 1984)
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
52.236-12	CLEANING UP (APR 1984)
52.236-13	ACCIDENT PREVENTION (NOV 1991) ALTERNATE I (NOV 1991)
52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)
52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)
52.236-17	LAYOUT OF WORK (APR 1984)
52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)
52.236-26	PRECONSTRUCTION CONFERENCE (FEB 1995)
52.236-28	PREPARATION OF PROPOSALS – CONSTRUCTION (OCT 1997)

- 52.239-1 PRIVACY OR SECURITY SAFEGUARD (AUG 1996)
- 52.242-13 BANKRUPTCY (JUL 1995)
- 52.242-14 SUSPENSION OF WORK (APR 1984)
- 52.243-4 CHANGES (JUNE 2007)
- 52.244-2 SUBCONTRACTS (JUNE 2007)
- 52.248-3 VALUE ENGINEERING - CONSTRUCTION (SEPT 2006)
- 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
(MAY 2004) – ALTERNATE 1 (SEP 1996)
- 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION)(APR 1984)
- 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)
 - (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
 - (b) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 19) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.
- 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

**COMMON ACCESS CARDS (CAC) FOR CONTRACTORS:
CONTRACTOR VERIFICATION SYSTEM (CVS)**

(a) “Contractor employee” means an employee of a firm, or an individual, under contract or subcontract to the Coast Guard to provide services and who requires physical and/or logical access to information systems and/or facilities.

(b) Homeland Security Presidential Directive (HSPD)-12 mandates a Federal standard for secure and reliable forms of identification for Federal employees and contractor employees. The Common Access Card (CAC) is a personal identification card for the Department of Defense/Uniformed Services and complies with HSPD-12. The Coast Guard has instituted the CAC as its HSPD-12 compliant personal identification card for contractor and subcontractor employees who are required to access a Coast Guard, Department of Defense (DOD), or other federally-controlled computer information system and/or facility, or need public key infrastructure (PKI) authentication to perform their contractual duties. The Contractor Verification System (CVS) is the automated application process for obtaining a CAC.

(c) Contractor and subcontractor employees working pursuant to this contract who are required to access a Coast Guard, DOD, or other federally-controlled computer information system and/or facility, or need PKI authentication to perform their contractual duties shall use CVS to obtain a CAC.

(d) The Contracting Officer Technical Representative (COTR) shall serve as the CVS Trusted Agent and is responsible for creating contractor accounts in the CVS; approving, returning, or rejecting the CAC application (as applicable); re-verifying assigned contractors every six months; revoking contractor and employee eligibility for a CAC; and confiscating a CAC when the contract expires or when a contractor or subcontractor employee stops working under the contract. Absent a COTR, the Contracting Officer shall serve as the CVS Trusted Agent.

(e) The COTR or Contracting Officer shall provide such forms to, or request such information from, contractor employees that may be necessary for obtaining a CAC via the CVS. Completed forms and information shall be submitted as directed by the COTR or Contracting Officer. Contractors are responsible for the accuracy and completeness of the information submitted and for any liability resulting from the Government’s reliance on inaccurate or incomplete information.

(f) Contractor or subcontractor employees who are declined a CAC via the CVS are ineligible to perform work under this contract. When an employee with a CAC is no longer performing work under this contract, the contractor shall notify the COTR or Contracting Officer on the same day the employee stops working and shall deliver the CAC to the COTR or Contracting Officer within seven calendar days after such notification.

(g) The contractor shall insert this clause in all subcontracts when a subcontractor's employee is required to access a Coast Guard, DOD, or other federally-controlled computer information system and/or facility, or need PKI authentication to perform contractual duties.

- 3052.211-70 INDEX FOR SPECIFICATIONS (DEC 2003)
- 3052.222-70 STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (DEC 2003)
- 3052.222-71 STRIKES OR PICKETING AFFECTING ACCESS TO A DHS FACILITY (DEC 2003)
- 3052.222-90 LOCAL HIRE (USCG) (JUN 2006)
- 3052.223-70 REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES-APPLICABLE LICENSES AND PERMITS (JUN 2006)
- 3052.223-90 ACCIDENT AND FIRE REPORTING (USCG) (DEC 2003)
- 3052.228-70 INSURANCE (DEC 2003)
- 3052.228-90 NOTIFICATION OF MILLER ACT PAYMENT BOND PROTECTION (USCG) (DEC 2003)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain the surety which has provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 USC 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact & Tel. No.)

- 3052.242-72 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (DEC 2003)

SECTION J

LIST OF ATTACHMENTS

<u>ATTACHMENT</u>	<u>TITLE</u>
J.1.	Specification No. 09-L01015
J.2.	Drawings No. A09-L01015 (Sheets 1 through 5)
J.3.	General Wage Decision No. NY100065 dated 3/12/2010 (0 Mods)
J.4	Bid Envelope Label

SECTION K

REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

www.arnet.gov/far and
[http://www.dhs.gov/interweb/assetlibrary/DHS_HSAR_With_Notice_04-](http://www.dhs.gov/interweb/assetlibrary/DHS_HSAR_With_Notice_04-01.pdf)

[01.pdf](http://www.dhs.gov/interweb/assetlibrary/DHS_HSAR_With_Notice_04-01.pdf) and

<http://www.dhs.gov/interweb/assetlibrary/HSAM-with-Notice-04-01.pdf>

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (FEB 2009)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is **236210**

(2) The small business size standard is **33.5**.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at [52.204-7](#), Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at [52.204-7](#) is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

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

(c)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) [52.203-2](#), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$100,000.

(iii) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the clause at [52.204-7](#), Central Contractor Registration.

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

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

(B) Exceed the simplified acquisition threshold; and

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

(v) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

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

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

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

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

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

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

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

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

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

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

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

(xv) [52.225-2](#), Buy American Act Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xvi) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at [52.225-3](#).

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

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

(C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.

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

(xviii) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(xix) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

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

[Contracting Officer check as appropriate.]

___ (i) [52.219-19](#), Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

___ (ii) [52.219-21](#), Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

___ (iii) [52.219-22](#), Small Disadvantaged Business Status.

___ (A) Basic.

___ (B) Alternate I.

___ (iv) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

___ (v) [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

___ (vi) [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

___ (vii) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA—Designated Products (Alternate I only).

___ (viii) [52.223-13](#), Certification of Toxic Chemical Release Reporting.

___ (ix) [52.227-6](#), Royalty Information.

___ (A) Basic.

___ (B) Alternate I.

___ (x) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

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

FAR CLAUSE #	TITLE	DATE	CHANGE
_____	_____	_____	_____

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

K.1 CONGRESSIONAL INFORMATION:

Contractor is requested to fill in the appropriate information set forth below:

(1) Home Office County and Congressional District _____

(2) Principal place of performance of the work required under the resulting contract (city, county and state) _____

(3) Congressional District of the principal place of performance: _____

K.2 AUTHORIZED NEGOTIATORS

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations. (List names, titles, and telephone numbers of the authorized negotiators.)

<u>NAME</u>	<u>TITLE</u>	<u>TELEPHONE NO</u>
_____	_____	_____
_____	_____	_____

SECTION L

INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFEROR

L.I. BONDS

A bid guarantee is required with an offer in excess of \$100,000.00. Bid guarantee shall be in the amount of 20 percent of the offer or \$3,000,000.00 which ever is less. Performance and Payment Bonds are required of the prospective contractor with any contract in excess of \$100,000.00. Performance Bond, SF-25 and Payment Bond 25A, are required in an amount equal to 100 percent of the original contract price. Performance and payment bonds placed with a surety or sureties acceptable to the Government and in the amounts indicated shall be submitted within ten (10) calendar days after receipt of award and shall be maintained for the entire contract.

L.2 SERVICE OF PROTEST (FAR 52.233-2) (SEP 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Contracting Officer, U. S. Coast Guard Facilities Design & Construction Center, 5505 Robin Hood Road, Suite K, Norfolk, Virginia 23513-2431.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

L.3 SITE VISIT (CONSTRUCTION) (FAR 52.236-27) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

(b) Site visits may be arranged during normal duty hours by contacting:

Name: LCDR Wayne Kean

Address: Sector Buffalo

Telephone: 716—843-9337

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es): <http://www.arnet.gov/far> and

http://www.dhs.gov/interweb/assetlibrary/DHS_HSAR_With_Notice_04-01.pdf and
<http://www.dhs.gov/interweb/assetlibrary/HSAM-with-Notice-04-01.pdf>

- 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (APR 2008)
52.211-14 NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY
PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008)
52.216-1 TYPE OF CONTRACT (APR 1984)
"The Government contemplates award of a Firm Fixed-Price contract resulting from this solicitation."
52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL
EMPLOYMENT OPPORTUNITY (FEB 1999)

L.4 INSTRUCTION FOR SUBMITTING QUESTIONS REGARDING SOLICITATION

Proposers are requested to review this solicitation as soon as possible upon receipt. If a proposer has any questions regarding the solicitation which require an answer from the issuing office, these questions shall be submitted, in writing, referencing section and paragraph of the solicitation, to the U.S. Coast Guard, Facilities Design and Construction Center, 5505 Robin Hood Rd., Suite K, Norfolk, VA 23513. Submit questions to Donna Miller at donna.e.miller@uscg.mil.

L.5 Submit your proposal packages to the Facilities Design and Construction Center at the address shown in Block 8 of Standard Form 1442. The Government must receive your proposal no later than the time and date specified in Block 13 of Standard Form 1442.

L.6 Instructions for preparation and organization of proposals are summarized below. In order to effectively and equitably evaluate proposals, the Technical Evaluation Team must receive information sufficiently detailed to clearly describe the offeror's technical approach and performance capabilities

L.6.1 PROPOSAL (TECHNICAL AND PAST PERFORMANCE). Submit an original and two copies of information in **one** volume, which addresses the Evaluation Factor (1) Corporate experience, (2) Past Performance and (3) Schedule. Submit information in a separate volume which addresses Factor (4) Price.

L.7 WHO MAY SUBMIT (THIS PROCUREMENT IS SET ASIDE FOR 8(a) BUSINESS CONCERNS).

SECTION M EVALUATION FACTORS FOR AWARD

1.0 GENERAL

1.1 Proposals will be evaluated as set forth below. The number and identities of offerors are not revealed to anyone not involved in the evaluation and award process or to other offerors.

2.0 EVALUATION PROCESS FOR PROPOSALS

2.1 The evaluation process essentially consists of three parts: proposal compliance review, technical/quality evaluation, and rating.

2.1.1 Proposal Compliance Review: This is an initial check by the Contracting Division on the basis of the solicitation requirements. This review is to identify any proposal that does not meet format requirements in Section M and/or is believed so grossly deficient as to be totally unacceptable on its face. If, as a result of the initial review, proposals are to be eliminated from further consideration, the Contracting Officer shall, after consulting with legal counsel, notify the Source Selection Authority (SSA). After SSA notification and approval to eliminate a proposal, the Contracting Officer shall immediately notify those offeror(s) whose proposals were found to be unacceptable.

2.1.2 Technical/Quality Evaluation: The Technical Evaluation Team (TET) will evaluate only those proposals passing the Proposal Compliance Review. Technical/quality evaluation consists of an evaluation and quality rating..

2.1.3 Maximum Number of Highly Qualified Offerors: The maximum number of highly qualified offerors shall not exceed five (5) unless the Contracting Officer determines that a number greater than five (5) is in the Government's best interest and is consistent with the purpose and objectives of two phase design-build contracting.

3.0 EVALUATION FACTORS FOR PROPOSALS.

3.1 The TET will evaluate and rate proposals in the areas (factors) listed below:

Factor 1 - Corporate Experience

Submit a minimum of three and no more than a maximum of five projects completed or ongoing by your firm within the past 5 years to demonstrate experience in construction and design of similar projects to the Request for Proposal (RFP) with emphasis in the following:

1. Decorative and security type fencing
2. Major earthwork filling and grading operations involving a minimum of 5,000 CY
3. Building construction – minimum 5,000 SF structures
4. Experience in working under AT/FP requirements

More weight will be given to Design-Build projects with similar size, scope and budget. More weight will be given to similar Design-Build projects wherein the construction and design team performed together. If the construction and design team have not performed together, state so. Describe experience on LEED projects, if not included in the projects listed above.

Factor 2 - Past Performance

The contractor may provide past performance references and evaluations for up to five projects. More weight will be given to similar projects. In addition, the Past Performance Information Retrieval System (PPIRS) at www.ppirs.gov shall be used for evaluation of proposals received in response to the solicitation.

Factor 3 - Schedule

Provide a preliminary schedule for the design and construction of the project. More weight will be given for shorter durations.

Factor 4 - Price

Price shall be evaluated on the basis of the total price for line items as shown in Section B-SUPPLES OR SERVICES AND PRICES/COSTS.

The distinction between corporate experience and past performance is corporate experience pertains to the types of work and volume of work completed by a contractor that are comparable to the type of work covered by this requirement, in terms of size, scope, and complexity. Past Performance relates to how well a contractor has performed.

The relative order of importance of Factors 1 through 3 are of equal importance.

Factor 4 is considered to be equal with Factors 1-3.

3.2. Price/Technical Trade-off Analysis: The rated technical evaluation criteria, taken together, and price, are considered equal. After the price analysis and technical/quality evaluations are complete, the Government will then consider the price in connection with the technical/quality evaluation to determine the proposal offering the most advantage to the Government. The Government will compare the relative advantages and disadvantages of the technical proposals and compare prices. The trade-off analysis will be conducted upon completion of the quality/price evaluations of final proposal revisions, if discussions are necessary, or after evaluation of initial offers, if discussions will not be necessary. .

4.0 TECHNICAL/QUALITY EVALUATION, WRITE-UP, AND GENERAL SCORING SYSTEM

4.1 Definitions

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

4.1.3 Deviation: Proposal implies or specifically offers a deviation below specified criteria. The offeror may or may not have called the deviation to the Government's attention. A deviation is a material deficiency. The technical reviewers will identify deviations. The contract normally can't be awarded with material deviations.

4.1.4 Clarification: Means limited exchanges, between the Government and offers, that may occur, when award without discussions is contemplated. Offeror may be given the opportunity to clarify certain aspects of the proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors. Clarification does not give the offeror an opportunity to revise or modify its proposal, except to the extent that corrections of

apparent clerical mistakes results in a revision. Clarifications do not require "discussions" or submission of another proposal.

4.1.5 Strength: An element of the proposal that exceeds a requirement of the solicitation in a way that is beneficial to the Government.

4.1.6 Weakness: Means a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

4.1.7 Technical Evaluation Definitions:

1. Definitions

Excellent – Proposal demonstrates thorough and detailed understanding of proposal requirements. Technical approach and capabilities significantly exceed performance and capability standards. Proposal demonstrates one or more strengths. Strengths significantly outweigh weaknesses, if any. The proposal represents a high probability of success with no apparent risk in meeting the Government's requirements.

Good – Proposal demonstrates good understanding of requirements. Technical approach and capabilities exceed performance and capability standards. Proposal offers one or more strengths. Strengths outweigh any weaknesses. The proposal represents a strong probability of success with overall low degree of risk in meeting the Government's requirements.

Satisfactory – Proposal demonstrates acceptable understanding of requirements. Technical approach and capabilities meet performance and capability standards. Proposal offers no strengths, or, if there are any strengths, these strengths are offset by weaknesses. The proposal represents a reasonable probability of success with overall moderate degree of risk in meeting the Government's requirements.

Marginal – Proposal demonstrates a limited understanding of requirements. Technical approach and capabilities are questionable as to whether or not they meet performance and capability standards necessary for acceptable contract performance. Proposal contains weaknesses and offers no strengths, or, if there are any strengths, these strengths are outweighed by weaknesses. The proposal represents a low probability of success with overall high degree of risk in meeting the Government's requirements. Proposal might be made satisfactory with additional information and without a major revision of the proposal.

Poor – Proposal demonstrates a lack of understanding of requirements. Technical approach and capabilities do not meet performance and capability standards necessary for acceptable contract performance. Proposal contains major errors, omissions, significant weaknesses and/or deficiencies. The proposal represents a very low probability of success with an extremely high degree of risk in meeting the Government's requirements. Proposal could only be made satisfactory with major revision of proposal.

2. Rating System for Evaluation of Risk: The SSEB will also assign a proposal risk rating for each technical factor. The proposal risk rating is shown below:

High (H) – The proposed approach is likely to cause significant disruption of schedule, increase in cost or degradation of performance even with special contractor emphasis and close government monitoring.

Moderate (M) – The proposed approach can potentially cause some disruption of schedule, increase in cost, or degradation of performance. However, special contractor emphasis and close government monitoring will probably be able to overcome difficulties.

Low (L) – The proposed approach has little potential to cause disruption of schedule, increase in cost, or degradation of performance. Normal contractor effort and normal government monitoring will probably be able to overcome difficulties.

4.2 Quality Evaluation and Rating System

4.2.1 The members of the TET will review the proposals and rate the quality of each scored evaluation factor. The TET will rate each proposal against the specified evaluation criteria in the RFP requirements. They will not compare proposals at this time. After proposals are rated, the TET will compare relative advantages and disadvantages of proposals against each other in order to determine which offer provides the “Best Value” to the Government.

4.2.2 Quality Review Write-up: The TET will support each evaluation factor rating with a narrative, separately listing all strengths or advantages, weaknesses or disadvantages, deficiencies, and required clarifications.

5.0 THE SELECTION PROCESS

5.1 The TET will perform the previously discussed price/technical trade-off analysis to determine which proposal is most advantageous to the Government, considering price and the evaluation factors. The TET will recommend award to the SSA of the proposal which is most advantageous to the Government.

6.0 BASIS OF AWARD

6.1 The Government will award a firm fixed-price contract to the responsible offeror whose proposal, conforming to the solicitation, is fair and reasonable, and has been determined to be most advantageous to the Government, considering Factors 1-3 and price. The rated evaluation criteria and price, are considered equal. As technical scores and relative advantages or disadvantages become less distinct, difference in price between proposals are of increased importance in determining the most advantageous proposal. Conversely, as difference in price becomes less distinct, differences in rating and relative advantages and disadvantages between proposals are of increased importance to the determination.

6.2 The Government reserves the right to accept other than the lowest offer. The right is also reserved to reject any and all offers. The basis of award will be a conforming offer, the price or cost of which may or may not be the lowest. If other than the lowest offer, it must be sufficiently more advantageous than the lowest offer to justify the payment of additional amounts.

13.0 The Congress in authorizing and funding this project has established certain cost limitations for the project. No award can be made for the design and construction of this project which with allowances for government imposed contingencies and overhead exceeds the statutory authorization. Proposals whose price for design and construction exceed the funds available may be rejected.