

Manager, the CONTRACTOR shall receive the rental rates in the current edition and appropriate volume of the "Rental Rate Blue Book for Construction Equipment", published by Dataquest, Inc., 1290 Ridder Park Drive, San Jose, CA 95131. Hourly rental rates shall be determined as follows:

The established hourly rental rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 176, and multiplied by the area adjustment factor, plus the estimated hourly operating cost.

The adjusted monthly rate is that resulting from application of the rate adjustment formula in order to eliminate replacement cost allowances in machine depreciation and contingency cost allowances.

Attachments shall not be included unless required for the time and materials work.

For equipment not listed in The Blue Book, the CONTRACTOR shall receive a rental rate as agreed upon before such work is begun. If agreement cannot be reached, the DEPARTMENT reserves the right to establish a rate based on similar equipment in the Blue Book or prevailing commercial rates in the area.

These rates shall apply for equipment used during the CONTRACTOR's regular shift of 10 hours per day. Where the equipment is used more than 10 hours per day, either on the CONTRACTOR's normal work or on time and materials, and either on single or multiple shifts, an overtime rate, computed as follows, shall apply:

The hourly overtime rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 352, and multiplied by the area adjustment factor, plus the estimated hourly operating cost.

Equipment which must be rented or leased specifically for work required under this section shall be authorized in writing by the Project Manager. The CONTRACTOR shall be paid invoice price plus 15%.

When it is necessary to obtain equipment from sources beyond the project limits exclusively for time and materials, work, the actual cost of transferring the equipment to the site of the work and return will be allowed as an additional item of expense. Where the move is made by common carrier, the move-in allowance will be limited to the amount of the freight bill or invoice. If the CONTRACTOR hauls the equipment with his own forces, the allowance will be limited to the rental rate for the hauling unit plus operator wages. In the event that the equipment is transferred under its own power, the moving allowance will be limited to one-half of the normal hourly rental rate plus operator's wages. In the event that the move-out is to a different location, payment will in no instance exceed the amount of the move-in. Move-in allowance shall not be made for equipment brought to the project for time and materials work which is subsequently retained on the project and utilized for completion of contract items, camp maintenance, or related work.

Equipment ordered to be on a stand-by basis shall be paid for at the stand-by rental rate for the number of hours in the CONTRACTOR'S normal work shift, but not to exceed 8 hours per day. The stand-by rental rate shall be computed as follows:

The hourly stand-by rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 352, all multiplied by the area adjustment factor.

Time will be recorded to the nearest one-quarter hour for purposes of computing compensation to the CONTRACTOR for equipment utilized under these rates.

The equipment rates as determined above shall be full compensation, including overhead and profit, for providing the required equipment and no additional compensation will be made for other costs such as, but not limited to, fuels, lubricants, replacement parts or maintenance costs. Cost of repairs, both major and minor, as well as charges for mechanic's time utilized in servicing equipment to ready it for use prior to moving to the project and similar charges will not be allowed.

- d. Sales, consumer, use or similar taxes related to the Work, and for which the CONTRACTOR is liable, imposed by Regulatory Requirements.
- e. Deposits lost for causes other than negligence of the CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by the CONTRACTOR in connection with the performance and furnishing of the Work provided they have resulted from causes other than the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and Approval of the DEPARTMENT. No such losses, damages and expenses shall be included in the "cost of the work" for the purpose of determining the CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and the CONTRACTOR is placed in charge thereof, the CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraphs 10.6.2.a and 10.6.2.b.
- g. The cost of utilities, fuel and sanitary facilities at the site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- I. Cost of premiums for additional bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by the DEPARTMENT in accordance with Article 5.

10.5 Excluded Costs:

The term "cost of the work" shall not include any of the following:

- 10.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agency, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 all of which are to be considered administrative costs covered by the CONTRACTOR's fee.
- 10.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
- 10.5.3 Any part of CONTRACTOR's capital expenses including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 10.5.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.i above).
- 10.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 10.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

10.6 CONTRACTOR's Fee:

The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows.

- 10.6.1 A mutually acceptable fixed fee; or if none can be agreed upon.
- 10.6.2 A fee based on the following percentages of the various portions of the "cost of the work":
 - a. For costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR's fee shall be fifteen percent;
 - b. For costs incurred under paragraph 10.4.3, the CONTRACTOR's fee shall be ten percent; and if a subcontract is on the basis of "cost of the work" plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit for itself and all Subcontractors and multiple tiers thereof shall be fifteen percent of the cost incurred by the subcontractor actually performing the work;
 - c. No fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;
 - d. The amount of credit to be allowed by the CONTRACTOR to the DEPARTMENT for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's fee by an amount equal to fifteen percent of the net decrease; and
 - e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.a through 10.6.2.d, inclusive.

10.7 Cost Breakdown:

Whenever the cost of any Work is to be determined pursuant to paragraphs 10.4 and 10.5, the CONTRACTOR will submit in a form acceptable to the DEPARTMENT an itemized cost breakdown together with supporting data.

10.8 Cash Allowances:

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to the Contracting Officer. CONTRACTOR agrees that:

- 10.8.1 The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
- 10.8.2 CONTRACTOR's cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due the CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.9 Unit Price Work:

- 10.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR will be made by the

DEPARTMENT in accordance with paragraph 10.10.

- 10.9.2 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item. If the "Basis of Payment" clause in the Contract Documents relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Documents.
- 10.9.3 Payment to the CONTRACTOR shall be made only for the actual quantities of Work performed and accepted or materials furnished, in conformance with the Contract Documents. When the accepted quantities of Work or materials vary from the quantities stated in the bid schedule, or change documents, the CONTRACTOR shall accept as payment in full, payment at the stated unit prices for the accepted quantities of Work and materials furnished, completed and accepted; except as provided below:
- a. When the quantity of Work to be done or material to be furnished under any item, for which the total cost of the item exceeds 10% of the total Contract Price, is increased by more than 25 percent of the quantity stated in the bid schedule, or change documents, either party to the Contract, upon demand, shall be entitled to an equitable unit price adjustment on that portion of the Work above 125 percent of the quantity stated in the bid schedule.
 - b. When the quantity of Work to be done or material to be furnished under any major item, for which the total cost of the item exceeds 10% of the total Contract Price, is decreased by more than 25 percent of the quantity stated in the bid schedule, or change documents either party to the Contract, upon demand, shall be entitled to an equitable price adjustment for the quantity of Work performed or material furnished, limited to a total payment of not more than 75 percent of the amount originally bid for the item.

10.10 Determinations for Unit Prices:

The Contracting Officer will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR. The Contracting Officer will review with the CONTRACTOR preliminary determinations on such matters before finalizing the costs and quantities on the Schedule of Values. The Contracting Officer's acknowledgment thereof will be final and binding on the CONTRACTOR, unless, within 10 days after the date of any such decisions, the CONTRACTOR delivers to the Contracting Officer written notice of intention to appeal from such a decision.

ARTICLE 11 - CONTRACT TIME; COMPUTATION AND CHANGE

11.1 Commencement of Contract Time; Notice to Proceed:

The Contract Time will commence to run on the day indicated in the Notice to Proceed.

11.2 Starting the Work:

No Work on Contract items shall be performed before the effective date of the Notice to Proceed. The CONTRACTOR shall notify the Contracting Officer at least 24 hours in advance of the time actual construction operations will begin. The CONTRACTOR may request a limited Notice to Proceed after Award has been made, to permit him to order long lead materials which could cause delays in Project completion. However, granting is within the sole discretion of the Contracting Officer, and refusal or failure to grant a limited Notice to Proceed shall not be a basis for claiming for delay, extension of time, or alteration of price.

11.3 Computation of Contract Time:

- 11.3.1 When the Contract Time is specified on a Calendar Day basis, all Work under the Contract shall be completed within the number of Calendar Days specified. The count of Contract Time begins on the day following receipt of the Notice to Proceed by the CONTRACTOR, if no starting day is stipulated therein.

Calendar Days shall continue to be counted against Contract Time until and including the date of Substantial Completion of the Work.

- 11.3.2 When the Contract completion time is specified as a fixed calendar date, it shall be the date of Substantial Completion.

- 11.3.3 The Contract Time shall be as stated on form 25D-9, Proposal.

11.4 Time Change:

The Contract Time may only be changed by a Change Order or Supplemental Agreement.

11.5 Extension Due to Delays:

The right of the CONTRACTOR to proceed shall not be terminated nor the CONTRACTOR charged with liquidated or actual damages because of delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to the following: acts of God or of the public enemy, acts of the DEPARTMENT in its contractual capacity, acts of another contractor in the performance of a contract with the DEPARTMENT, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and delays of Subcontractors or Suppliers due to such causes. Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension, provided that the CONTRACTOR shall within twenty four (24) hours from the beginning of any such delay (unless the Contracting Officer shall grant a further period of the time prior to the date of final settlement of the Contract), notify the Contracting Officer in writing of the cause of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the Work when the findings of fact justify such an extension.

11.6 Essence of Contract:

All time limits stated in the Contract Documents are of the essence of the Contract.

11.7 Reasonable Completion Time:

It is expressly understood and agreed by and between the CONTRACTOR and the DEPARTMENT that the date of

beginning and the time for Substantial Completion of the Work described herein are reasonable times for the completion of the Work.

11.8 Delay Damages:

Whether or not the CONTRACTOR's right to proceed with the Work is terminated, he and his Sureties shall be liable for damages resulting from his refusal or failure to complete the Work within the specified time.

Liquidated and actual damages for delay shall be paid by the CONTRACTOR or his Surety to the DEPARTMENT in the amount as specified in the Supplementary Conditions for each Calendar Day the completion of the Work or any part thereof is delayed beyond the time required by the Contract, or any extension thereof. If a listing of incidents resulting from a delay and expected to give rise to actual or liquidated damages is not established by the Contract Documents, then the CONTRACTOR and his Surety shall be liable to the DEPARTMENT for any actual damages occasioned by such delay. The CONTRACTOR acknowledges that the liquidated damages established herein are not a penalty but rather constitute an estimate of damages that the DEPARTMENT will sustain by reason of delayed completion. These liquidated and actual damages are intended as compensation for losses anticipated to arise, and include those items enumerated in the Supplementary Conditions.

These damages will continue to run both before and after termination in the event of default termination. These liquidated damages do not cover excess costs of completion or DEPARTMENT costs, fees, and charges related to reprourement. If a default termination occurs, the CONTRACTOR or his Surety shall pay in addition to these damages, all excess costs and expenses related to completion as provided by Article 14.2.5.

ARTICLE 12 - QUALITY ASSURANCE

12.1 Warranty and Guaranty:

The CONTRACTOR warrants and guarantees to the DEPARTMENT that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided for in this article.

12.2 Access to Work:

The DEPARTMENT and the DEPARTMENT's representatives, testing agencies and governmental agencies with jurisdiction interests will have access to the Work at reasonable times for their observation, inspecting and testing. The CONTRACTOR shall provide proper and safe conditions for such access.

12.3 Tests and Inspections:

12.3.1 The CONTRACTOR shall give the Contracting Officer timely notice of readiness of the Work for all required inspections, tests or Approvals.

12.3.2 If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish the Contracting Officer the required certificates of inspection, testing or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with DEPARTMENT's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for Approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by the CONTRACTOR. The DEPARTMENT may perform additional tests and inspections which it deems necessary to insure quality control. All such failed tests or inspections shall be at the CONTRACTOR's expense.

12.3.4 If any Work (including the work of others) that is to be inspected, tested or Approved is covered without written concurrence of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR has given the Contracting Officer timely notice of CONTRACTOR's intention to cover the same and the Contracting Officer has not acted with reasonable promptness in response to such notice.

12.3.5 Neither observations nor inspections, tests or Approvals by the DEPARTMENT or others shall relieve the CONTRACTOR from the CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

12.4 Uncovering Work:

12.4.1 If any Work is covered contrary to the written request of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for the Contracting Officer's observation and replaced at the CONTRACTOR's expense.

- 12.4.2 If the Contracting Officer considers it necessary or advisable that covered Work be observed inspected or tested, the CONTRACTOR, at the Contracting Officer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Contracting Officer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, the CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) and the DEPARTMENT shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

12.5 DEPARTMENT May Stop the Work:

If the Work is Defective, or the CONTRACTOR fails to supply suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Contracting Officer may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Contracting Officer to stop the Work shall not give rise to any duty on the part of the Contracting Officer to exercise this right for the benefit of the CONTRACTOR or any other party.

12.6 Correction or Removal of Defective Work:

If required by the Contracting Officer, the CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Contracting Officer, remove it from the site and replace it with Work which conforms to the requirements of the Contract Documents. The CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.7 One Year Correction Period:

If within one year after the date of Substantial Completion of the relevant portion of the work or such longer period of time as may be prescribed by Regulatory Requirements or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the CONTRACTOR shall promptly, without cost to the DEPARTMENT and in accordance with the Contracting Officer's written instructions, either correct such Defective Work, or, if it has been rejected by the Contracting Officer, remove it from the site and replace it with conforming Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the DEPARTMENT may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service for the benefit of the DEPARTMENT before Substantial Completion of all the Work, the correction period for that item may begin on an earlier date if so provided in the Specifications or by Change Order. Provisions of this paragraph are not intended to shorten the statute of limitations for bringing an action.

12.8 Acceptance of Defective Work:

Instead of requiring correction or removal and replacement of Defective Work, the Contracting Officer may accept Defective Work, the CONTRACTOR shall bear all direct, indirect and consequential costs attributable to the Contracting Officer's evaluation of and determination to accept such Defective Work (costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the DEPARTMENT shall be entitled to an appropriate decrease in the Contract Price. If the DEPARTMENT has already made final payment to the CONTRACTOR, an appropriate amount shall be paid by the CONTRACTOR or his Surety to the DEPARTMENT.

12.9 DEPARTMENT May Correct Defective Work:

If the CONTRACTOR fails within a reasonable time after written notice from the Contracting Officer to proceed to correct Defective Work or to remove and replace rejected Work as required by the Contracting Officer in accordance with paragraph 12.6, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the DEPARTMENT may, after 7 days' written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the DEPARTMENT shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Contracting Officer may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, take possession of the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or approved remote storage sites or for which the DEPARTMENT has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the Contracting Officer and his authorized representatives such access to the site as may be necessary to enable the Contracting Officer to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the DEPARTMENT in exercising such rights and remedies will be charged against the CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the DEPARTMENT shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the CONTRACTOR's Defective Work. The CONTRACTOR shall not be allowed an extension of time because of any delay in performance of the work attributable to the exercise, by the Contracting Officer, of the DEPARTMENT's rights and remedies hereunder.

ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 Schedule of Values:

The Schedule of Values established as provided in paragraph 6.6 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Contracting Officer. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Preliminary Payments:

Upon approval of the Schedule of Values the CONTRACTOR may be paid for direct costs substantiated by paid invoices and other prerequisite documents required by the General Requirements. Direct costs shall include the cost of bonds, insurance, approved materials stored on the site or at approved remote storage sites, deposits required by a Supplier prior to fabricating materials, and other approved direct mobilization costs substantiated as indicated above. These payments shall be included as a part of the total Contract Price as stated in the Contract.

13.3 Application for Progress Payment:

The CONTRACTOR shall submit to the Contracting Officer for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. Progress payments will be made as the Work progresses on a monthly basis.

13.4 Review of Applications for Progress Payment:

Contracting Officer will either indicate in writing a recommendation of payment or return the Application for Payment to the CONTRACTOR indicating in writing the Contracting Officer's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application for Payment.

13.5 Stored Materials and Equipment:

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, paid invoice or other documentation warranting that the DEPARTMENT has received the materials and equipment free and clear of all charges, security interests and encumbrances and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the DEPARTMENT's interest therein, all of which will be satisfactory to the Contracting Officer. No payment will be made for perishable materials that could be rendered useless because of long storage periods. No progress payment will be made for living plant materials until planted.

13.6 CONTRACTOR's Warranty of Title:

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the DEPARTMENT no later than the time of payment free and clear of any claims, liens, security interests and further obligations.

13.7 Withholding of Payments:

The DEPARTMENT may withhold or refuse payment for any of the reasons listed below provided it gives written notice of its intent to withhold and of the basis for withholding:

- 13.7.1 The Work is Defective, or completed Work has been damaged requiring correction or replacement, or has been installed without Approval of Shop Drawings, or by an unapproved Subcontractor, or for unsuitable storage of materials and equipment.

- 13.7.2 The Contract Price has been reduced by Change Order,
- 13.7.3 The DEPARTMENT has been required to correct Defective Work or complete Work in accordance with paragraph 12.9.
- 13.7.4 The DEPARTMENT's actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1.a through 14.2.1.k inclusive.
- 13.7.5 Claims have been made against the DEPARTMENT or against the funds held by the DEPARTMENT on account of the CONTRACTOR's actions or inactions in performing this Contract, or there are other items entitling the DEPARTMENT to a set off.
- 13.7.6 Subsequently discovered evidence or the results of subsequent inspections or test, nullify any previous payments for reasons stated in subparagraphs 13.7.1 through 13.7.5.
- 13.7.7 The CONTRACTOR has failed to fulfill or is in violation of any of his obligations under any provision of this Contract.

13.8 Retainage:

At any time the DEPARTMENT finds that satisfactory progress is not being made it may in addition to the amounts withheld under 13.7 retain a maximum amount equal to 10% of the total amount earned on all subsequent progress payments. This retainage may be released at such time as the Contracting Officer finds that satisfactory progress is being made.

13.9 Request for Release of Funds:

If the CONTRACTOR believes the basis for withholding is invalid or no longer exists, immediate written notice of the facts and Contract provisions on which the CONTRACTOR relies, shall be given to the DEPARTMENT, together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. In the case of withholding which has occurred at the request of the Department of Labor, the CONTRACTOR shall provide a letter from the Department of Labor stating that withholding is no longer requested.

Following such a submittal by the CONTRACTOR, the DEPARTMENT shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

13.10 Substantial Completion:

When the CONTRACTOR considers the Work ready for its intended use the CONTRACTOR shall notify the Contracting Officer in writing that the Work or a portion of Work which has been specifically identified in the Contract Documents is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the DEPARTMENT issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Contracting Officer, the CONTRACTOR and appropriate Consultant(s) shall make an inspection of the Work to determine the status of completion. If the Contracting Officer does not consider the Work substantially complete, the Contracting Officer will notify the CONTRACTOR in writing giving the reasons therefor. If the Contracting Officer considers the Work substantially complete, the Contracting Officer will within fourteen days execute and deliver to the CONTRACTOR a certificate of Substantial Completion with tentative list of items to be completed or corrected. At the time of delivery of the certificate of Substantial Completion the Contracting Officer will deliver to the CONTRACTOR a written division of responsibilities pending Final Completion with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties which shall be consistent with the terms of the Contract Documents.

The DEPARTMENT shall be responsible for all DEPARTMENT costs resulting from the initial inspection and the first re-inspection, the CONTRACTOR shall pay all costs incurred by the DEPARTMENT resulting from re-

inspections, thereafter.

13.11 Access Following Substantial Completion:

The DEPARTMENT shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion, but the DEPARTMENT shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

13.12 Final Inspection:

Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete, the Contracting Officer will make a final inspection with the CONTRACTOR and appropriate Consultant(s) and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies. The CONTRACTOR shall pay for all costs incurred by the DEPARTMENT resulting from re-inspections.

13.13 Final Completion and Application for Payment:

After the CONTRACTOR has completed all such corrections to the satisfaction of the Contracting Officer and delivered all schedules, guarantees, bonds, certificates of payment to all laborers, Subcontractors and Suppliers, and other documents - all as required by the Contract Documents; and after the Contracting Officer has indicated in writing that the Work has met the requirements for Final Completion, and subject to the provisions of paragraph 13.18, the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all remaining certificates, warranties, guarantees, releases, affidavits, and other documentation required by the Contract Documents.

13.14 Final Payment:

- 13.14.1 If on the basis of the Contracting Officer's observation of the Work during construction and final inspection, and the Contracting Officer's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents; and the Contracting Officer is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the DEPARTMENT will process final Application for Payment. Otherwise, the Contracting Officer will return the Application for Payment to the CONTRACTOR, indicating in writing the reasons for refusing to process final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the final Application for Payment.
- 13.14.2 If, through no fault of the CONTRACTOR, Final Completion of the Work is significantly delayed, the Contracting Officer shall, upon receipt of the CONTRACTOR's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the DEPARTMENT for Work not fully completed or corrected is less than the retainage provided for in paragraph 13.9, and if bonds have been furnished as required in paragraph 5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the DEPARTMENT with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

13.15 Final Acceptance:

Following certification of payment of payroll and revenue taxes, and final payment to the CONTRACTOR, the DEPARTMENT will issue a letter of Final Acceptance, releasing the CONTRACTOR from further obligations under the Contract, except as provided in paragraph 13.17.

13.16 CONTRACTOR's Continuing Obligation:

The CONTRACTOR's obligation to perform and complete the Work and pay all laborers, Subcontractors, and materialmen in accordance with the Contract Documents shall be absolute. Neither any progress or final payment by the DEPARTMENT, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by the DEPARTMENT or Using Agency, nor any act of acceptance by the DEPARTMENT nor any failure to do so, nor any review and Approval of a Shop Drawing or sample submission, nor any correction of Defective Work by the DEPARTMENT will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

When it is anticipated that restarting, testing, adjusting, or balancing of systems will be required following Final Acceptance and said requirements are noted in Section(s) 01650, such Work shall constitute a continuing obligation under the Contract.

13.17 Waiver of Claims by CONTRACTOR:

The making and acceptance of final payment will constitute a waiver of all claims by the CONTRACTOR against the DEPARTMENT other than those previously made in writing and still unsettled.

13.18 No Waiver of Legal Rights:

The DEPARTMENT shall not be precluded or be estopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work performed and materials furnished by the CONTRACTOR, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials are Defective. The DEPARTMENT shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the CONTRACTOR or his Sureties, or both, such damages as it may sustain by reason of his failure to comply with requirements of the Contract Documents. Neither the acceptance by the DEPARTMENT, or any representative of the DEPARTMENT, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract Time, nor any possession taken by the DEPARTMENT, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver by the DEPARTMENT of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

ARTICLE 14 - SUSPENSION OF WORK, DEFAULT AND TERMINATION

14.1 DEPARTMENT May Suspend Work:

- 14.1.1 The DEPARTMENT may, at any time, suspend the Work or any portion thereof by notice in writing to the CONTRACTOR. If the Work is suspended without cause the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if the CONTRACTOR makes an Approved claim therefor as provided in Article 15. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the CONTRACTOR, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR.
- 14.1.2 In case of suspension of Work, the CONTRACTOR shall be responsible for preventing damage to or loss of any of the Work already performed and of all materials whether stored on or off the site or Approved remote storage sites.

14.2 Default of Contract:

- 14.2.1 The Contracting Officer may give the CONTRACTOR and its surety a written Notice to Cure Default if the CONTRACTOR:
- a. fails to begin work in the time specified,
 - b. fails to use sufficient resources to assure prompt completion of the work,
 - c. performs the work unsuitably or neglects or refuses to remove and replace rejected materials or work,
 - d. stops work,
 - e. fails to resume stopped work after receiving notice to do so,
 - f. becomes insolvent (except that if the CONTRACTOR declares bankruptcy, termination will be under Title 11 US Code 362 and/or 365. The CONTRACTOR'S bankruptcy does not relieve the surety of any obligations to assume the Contract and complete the work in a timely manner.
 - g. Allows any final judgment to stand against him unsatisfied for period of 60 days, or
 - h. Makes an assignment for the benefit of creditors without the consent of the Contracting Officer, or
 - i. Disregards Regulatory Requirements of any public body having jurisdiction, or
 - j. Otherwise violates in any substantial way any provisions of the Contract Documents, or
 - k. fails to comply with Contract minimum wage payments or civil rights requirements, or
 - l. is a party to fraud, deception, misrepresentation , or
 - m. for any cause whatsoever, fails to carry on the Work in an acceptable manner.
- 14.2.2 The Notice to Cure Default will detail the conditions determined to be in default, the time within which to cure the default and may, in the Contracting Officer's discretion, specify the actions necessary to cure the default. Failure to cure the delay, neglect or default within the time specified in the Contracting Officer's written notice to cure authorizes the DEPARTMENT to terminate the contract. The Contracting Officer may allow more time to cure than originally stated in the Notice to Cure Default if he deems it to be in the best interests of the DEPARTMENT. The DEPARTMENT will provide the CONTRACTOR or its surety with a written Notice of Default Termination that details the default and the failure to cure it.
- 14.2.3 If the CONTRACTOR or its Surety, within the time specified in the above notice of default, shall not proceed in accordance therewith, then the DEPARTMENT may, upon written notification from the Contracting Officer of the fact of such delay, neglect or default and the CONTRACTOR's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the CONTRACTOR. The DEPARTMENT may terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be

used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the DEPARTMENT has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the DEPARTMENT may deem expedient. The DEPARTMENT may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods that in the opinion of the Contracting Officer are required for the completion of said Contract in an acceptable manner.

- 14.2.4 The Contracting Officer may, by written notice to the CONTRACTOR and its Surety or its representative, transfer the employment of the Work from the CONTRACTOR to the Surety, or if the CONTRACTOR abandons the Work undertaken under the Contract, the Contracting Officer may, at its option with written notice to the Surety and without any written notice to the CONTRACTOR, transfer the employment for said Work directly to the Surety. The Surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to the DEPARTMENT for approval prior to beginning completion of the Work. Approval of such contracts shall be in accordance with all applicable requirements and procedures for approval of subcontracts as stated in the Contract Documents.
- 14.2.5 After the notice of termination is issued, the DEPARTMENT may take over the work and complete it by contract or otherwise and may take possession of and use materials, appliances, equipment or plant on the work site necessary for completing the work.
- 14.2.6 Rather than taking over the work itself, the DEPARTMENT may transfer the obligation to perform the work from the CONTRACTOR to its surety. The surety must submit its plan for completion of the work, including any contracts or agreements with third parties for completion, to the DEPARTMENT for approval prior to beginning work. The surety must follow the Contract requirements for approval of subcontracts, except that the limitation on percent of work subcontracted will not apply.
- 14.2.7 On receipt of the transfer notice, the surety must take possession of all materials, tools, and appliances at the work site, employ an appropriate work force, and complete the Contract work, as specified. The Contract specifications and requirements shall remain in effect. However the DEPARTMENT will make subsequent Contract payments directly to the Surety for work performed under the terms of the Contract. The CONTRACTOR shall forfeit any right to claim for the same work or any part thereof. The CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the Contract.
- 14.2.8 Upon receipt of the notice terminating the services of the CONTRACTOR, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons to finish the Work and provide the materials therefore, without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to the Surety, the Surety shall be paid in its own name on estimates covering Work subsequently performed under the terms of the Contract and according to the terms thereof without any right of the CONTRACTOR to make any claim for the same or any part thereof.
- 14.2.9 If the Contract is terminated for default, the CONTRACTOR and the Surety shall be jointly and severally liable for damages for delay as provided by paragraph 11.8, and for the excess cost of completion, and all costs and expenses incurred by the DEPARTMENT in completing the Work or arranging for completion of the Work, including but not limited to costs of assessing the Work to be done, costs associated with advertising, soliciting or negotiating for bids or proposals for completion, and other procurement costs. Following termination the CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the Contract until the Work is fully finished and accepted, at which time if the unpaid balance exceeds the amount due the DEPARTMENT and any amounts due to persons for whose benefit the DEPARTMENT has withheld funds, such excess shall be paid by the DEPARTMENT to the CONTRACTOR. If the damages, costs, and expenses due the DEPARTMENT exceed the unpaid balance, the CONTRACTOR and its Surety shall pay the difference.
- 14.2.10 If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with the clause providing for convenience termination.

14.3 Rights or Remedies:

Where the CONTRACTOR's services have been so terminated by the DEPARTMENT, the termination will not affect any rights or remedies of the DEPARTMENT against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the DEPARTMENT will not release the CONTRACTOR from liability.

14.4 Convenience Termination:

14.4.1 The performance of the Work may be terminated by the DEPARTMENT in accordance with this section in whole or in part, whenever, for any reason the Contracting Officer shall determine that such termination is in the best interest of the DEPARTMENT. Any such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination, specifying termination is for the convenience of the DEPARTMENT the extent to which performance of Work is terminated, and the date upon which such termination becomes effective.

14.4.2 Immediately upon receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the CONTRACTOR shall:

- a. Stop Work on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- d. With the written Approval of the Contracting Officer, to the extent he may require, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract;
- e. Submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory exclusive of items the disposition of which had been directed or authorized by the Contracting Officer;
- f. Transfer to the Contracting Officer the completed or partially completed record drawings, Shop Drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the DEPARTMENT;
- g. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the CONTRACTOR and in which the DEPARTMENT has or may acquire any interest.

The CONTRACTOR shall proceed immediately with the performance of the above obligations.

14.4.3 When the DEPARTMENT orders termination of the Work effective on a certain date, all Work in place as of that date will be paid for in accordance with Article 13 of the Contract. Materials required for completion and on hand but not incorporated in the Work will be paid for at invoice cost plus 15% with materials becoming the property of the DEPARTMENT - or the CONTRACTOR may retain title to the materials and be paid an agreed upon lump sum. Materials on order shall be cancelled, and the DEPARTMENT shall pay reasonable factory cancellation charges with the option of taking delivery of the materials in lieu of payment of cancellation charges. The CONTRACTOR shall be paid 10% of the cost, freight not included, of materials cancelled, and direct expenses only for CONTRACTOR chartered freight transport which cannot be cancelled without charges, to the extent that the CONTRACTOR can establish them. The extra costs due to cancellation of bonds and insurance and that part of job start-up and phase-out costs not amortized by the amount of Work accomplished shall be paid by the DEPARTMENT. Charges for loss of profit or consequential damages shall not be recoverable except as provided above.

- a. The following costs are not payable under a termination settlement agreement or Contracting Officer's determination of the termination claim:
 1. Loss of anticipated profits or consequential or compensatory damages

2. Unabsorbed home office overhead (also termed "General & Administrative Expense") related to ongoing business operations
 3. Bidding and project investigative costs
 4. Direct costs of repairing equipment to render it operable for use on the terminated work
- 14.4.4 The termination claim shall be submitted promptly, but in no event later than 90 days from the effective date of termination, unless extensions in writing are granted by the Contracting Officer upon written request of the CONTRACTOR made within the 90-day period. Upon failure of the CONTRACTOR to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR the amount so determined.
- 14.4.5 The CONTRACTOR and the Contracting Officer may agree upon whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of Work pursuant to this section. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount.
- 14.4.6 In the event of the failure of the CONTRACTOR and the Contracting Officer to agree in whole or in part, as provided heretofore, as to the amounts with respect to costs to be paid to the CONTRACTOR in connection with the termination of the Work the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amount determined as follows:
- a. All costs and expenses reimbursable in accordance with the Contract not previously paid to the CONTRACTOR for the performance of the Work prior to the effective date of the Notice of Termination;
 - b. So far as not included under "a" above, the cost of settling and paying claims arising out of the termination of the Work under subcontracts or orders which are properly chargeable to the terminated portions of the Contract;
 - c. So far as practicable, claims by the CONTRACTOR for idled or stand-by equipment shall be made as follows: Equipment claims will be reimbursed as follows:
 1. Contractor-owned equipment usage, based on the CONTRACTOR'S ownership and operating costs for each piece of equipment as determined from the CONTRACTOR'S accounting records. Under no circumstance, may the CONTRACTOR base equipment claims on published rental rates.
 2. Idle or stand-by time for Contractor-owned equipment, based on the CONTRACTOR'S internal ownership and depreciation costs. Idle or stand-by equipment time is limited to the actual period of time equipment is idle or on stand-by as a direct result of the termination, not to exceed 30 days. Operating expenses will not be included for payment of idle or stand-by equipment time.
 3. Rented equipment, based on reasonable, actual rental costs. Equipment leased under "capital leases" as defined in Financial Accounting Standard No. 13 will be considered Contractor-owned equipment. Equipment leased from an affiliate, division, subsidiary or other organization under common control with the CONTRACTOR will be considered Contractor-owned equipment, unless the lessor has an established record of leasing to unaffiliated lessees at competitive rates consistent with the rates the CONTRACTOR has agreed to pay and no more than forty percent of the lessor's leasing business, measured in dollars, is with organizations affiliated with the lessor.
- 14.4.7 The CONTRACTOR shall have the right of appeal under the DEPARTMENT's claim procedures, as defined in Article 15, for any determination made by the Contracting Officer, except if the CONTRACTOR has failed to submit his claim within the time provided and has failed to request extension of such time, CONTRACTOR shall have no such right of appeal. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:
- a. All previous payments made to the CONTRACTOR for the performance of Work under the Contract prior to termination;
 - b. Any claim for which the DEPARTMENT may have against the CONTRACTOR;
 - c. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the

CONTRACTOR or sold pursuant to the provisions of this section and not otherwise recovered by or credited to the DEPARTMENT; and,

- d. All progress payments made to the CONTRACTOR under the provisions of this section.
- 14.4.8 Where the Work has been terminated by the DEPARTMENT said termination shall not affect or terminate any of the rights of the DEPARTMENT against the CONTRACTOR or his Surety then existing or which may thereafter accrue because of such default. Any retention or payment of monies by the DEPARTMENT due to the CONTRACTOR under the terms of the Contract shall not release the CONTRACTOR or its Surety from liability.
- 14.4.9 The CONTRACTOR's termination claim may not include claims that pre dated the notice for termination for convenience. Those claims shall be prosecuted by the CONTRACTOR under Article 15.
- 14.4.10 The CONTRACTOR'S termination claim may not exceed the total dollar value of the contract as awarded plus agreed upon change orders less the amounts that have been paid for work completed.
- a. Unless otherwise provided for in the Contract Documents, or by applicable statute, the CONTRACTOR, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the DEPARTMENT at all reasonable times at the office of the CONTRACTOR, all its books, records, documents, and other evidence bearing on the cost and expenses of the CONTRACTOR under his Contract and relating to the Work terminated hereunder.
 - b. Definitions. In this Subsection 108-1.09, the term "cost" and the term "expense" mean a monetary amount in U.S. Dollars actually incurred by the CONTRACTOR, actually reflected in its contemporaneously maintained accounting or other financial records and supported by original source documentation.
 - c. Cost Principles. The DEPARTMENT may use the federal cost principles at 48 CFR §§ 31.201-1 to 31.205-52 (or succeeding cost principles for fixed price contracts) as guidelines in determining allowable costs under this Subsection to the extent they are applicable to construction contracts and consistent with the specifications of this Contract. The provisions of this contract control where they are more restrictive than, or inconsistent with, these federal cost principles."

ARTICLE 15 - CLAIMS FOR ADJUSTMENT AND DISPUTES

15.1 Notification

- 15.1.1 The CONTRACTOR shall notify the DEPARTMENT in writing as soon as the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a claim for additional compensation or an extension of Contract Time or of any dispute regarding a question of fact or interpretation of the Contract. The DEPARTMENT has no obligation to investigate any fact or occurrence that might form the basis of a claim or to provide any additional compensation or extension of Contract Time unless the CONTRACTOR has notified the DEPARTMENT in writing in a timely manner of all facts the CONTRACTOR believes form the basis for the claim.
- 15.1.2 If the CONTRACTOR believes that he is entitled to an extension of Contract Time, then the CONTRACTOR must state the contract section on which he basis his extension request, provide the DEPARTMENT with sufficient information to demonstrate that the CONTRACTOR has suffered excusable delay, and show the specific amount of time to which the CONTRACTOR is entitled. The DEPARTMENT will not grant an extension of Contract Time if the CONTRACTOR does not timely submit revised schedules under **Section 01310**.
- 15.1.3 If the matter is not resolved by agreement within 7 days, the CONTRACTOR shall submit an Intent to Claim, in writing, to the DEPARTMENT within the next 14 days.
- 15.1.4 If the CONTRACTOR believes additional compensation or time is warranted, then he must immediately begin keeping complete, accurate, and specific daily records concerning every detail of the potential claim including actual costs incurred. The CONTRACTOR shall provide the DEPARTMENT access to any such records and furnish the DEPARTMENT copies, if requested. Equipment costs must be based on the CONTRACTOR's internal rates for ownership, depreciation, and operating expenses and not on published rental rates. In computing damages, or costs claimed for a change order, or for any other claim against the DEPARTMENT for additional time, compensation or both, the CONTRACTOR must prove actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost or jury verdict forms of presentation of damage claims are not permissible to show damages. Labor inefficiencies must be shown to actually have occurred and can be proven solely based on job records. Theoretical studies are not a permissible means of showing labor inefficiencies. Home office overhead will not be allowed as a component of any claim against the DEPARTMENT.
- 15.1.5 If the claim or dispute is not resolved by the DEPARTMENT, then the CONTRACTOR shall submit a written Claim to the Contracting Officer within 90 days after the CONTRACTOR becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier. The Contracting Officer will issue written acknowledge of the receipt of the Claim.
- 15.1.6 The CONTRACTOR waives any right to claim if the DEPARTMENT was not notified properly or afforded the opportunity to inspect conditions or monitor actual costs or if the Claim is not filed on the date required.

15.2 Presenting the Claim

- 15.2.1 The Claim must include all of the following:
- a. The act, event, or condition the claim is based on
 - b. The Contract provisions which apply to the claim and provide relief
 - c. The item or items of Contract work affected and how they are affected
 - d. The specific relief requested, including Contract Time if applicable, and the basis upon which it was calculated
 - e. A statement certifying that the claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of your knowledge and belief, and that the amount requested accurately reflects the Contract adjustment which the CONTRACTOR believes is due.

15.3 Claim Validity, Additional Information, and DEPARTMENT's Action

- 15.3.1 The Claim, in order to be valid, must not only show that the CONTRACTOR suffered damages or delay but that it was caused by the act, event, or condition complained of and that the Contract provides entitlement to relief for such act, event, or condition.
- 15.3.2 The DEPARTMENT can make written request to the CONTRACTOR at any time for additional information relative to the Claim. The CONTRACTOR shall provide the DEPARTMENT the additional information within 30 days of receipt of such a request. Failure to furnish the additional information may be regarded as a waiver of the Claim.

15.4 Contracting Officer's Decision

The CONTRACTOR will be furnished the Contracting Officer's Decision within 90 days, unless the Contracting Officer requests additional information or gives the CONTRACTOR notice that the time for issuing a decision is being extended for a specified period under AS 36.30.620. The Contracting Officer's decision is final and conclusive unless, within 14 days of receipt of the decision, the CONTRACTOR delivers a Notice of Appeal to the Appeals Officer. Procedures for appeals are covered under AS 36.30.625 and AS 36.30.630.

15.5 Fraud and Misrepresentation in Making Claims

Criminal and Civil penalties authorized under AS 36.30.687 (including, but not limited to, forfeiture of all claimed amounts) may be imposed on the CONTRACTOR if the CONTRACTOR makes or uses a misrepresentation in support of a claim or defraud or attempt to defraud the DEPARTMENT at any stage of prosecuting a claim under this Contract.

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Section 00760
SUPPLEMENTAL REQUIREMENTS FOR DMVA / FEDERALLY FUNDED CONTRACTS
Competitive Sealed Proposals – AS 36.30.200(b)
Federal-Aid Buildings

STATE OF ALASKA, DEPARTMENT OF MILITARY AND VETERAN AFFAIRS

BAAF - 47431 Hangar 4 - Roof and Envelope Project
02A7026004

Section 801. Applicable Law.

The Successful Contractor will comply with the following Applicable Laws. To view any referenced Laws or Statutes in their entirety please contact the Project Manager.

Section 802. Governing Regulations.

This contract and the parties involved with this contract will comply with, the provisions of 32 CFR Part 33, Uniform Administrative Requirements for Grants and Cooperative Agreements, DoD Grant and Agreement Regulations (DoDGARS) (DoD 3210.6-R) as amended, Title 2 Code of Federal Regulations (CFR) Part 225, and NGR 5-1.

Section 803. Nondiscrimination.

This contract and the parties involved with this contract will comply with the following national policies prohibiting discrimination:

- A. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.
- B. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60.
- C. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.
- D. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.
- E. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR Part 56.

Section 804. Lobbying.

- A. The State covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Cooperative Agreement.
- B. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the state agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

Section 805. Drug-Free work Place.

This contract and the parties involved with this contract will comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Section 806. Environmental Protection.

- A.** The contractor and all parties, under this contract, agree that its performance under this Agreement shall comply with:
- i. The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
 - ii. Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
 - iii. The Resources Conservation and Recovery Act (RCRA);
 - iv. The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
 - v. The National Environmental Policy Act (NEPA);
 - vi. The Solid Waste Disposal Act (SWDA);
 - vii. The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
 - viii. To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.
- B.** In accordance with the EPA rules, the party further agrees to also identify to the awarding agency (***State of Alaska \ Department of Military and Veterans Affairs \ Facilities Management Office***) any impact this award may have on:
- i. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
 - ii. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
 - iii. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
 - iv. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
 - v. Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
 - vi. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

Section 807. Use of United States Flag Carriers.

- A.** The contractor and the parties involved, under this contract, agree that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.
- B.** The contractor and the parties involved, under this contract, agree that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

Section 808. Debarment and Suspension.

This contract and the parties involved will comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR Part 180, as implemented by the DoD in 2 CFR Part 1125. The State agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the State enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR Part 1125.

Section 809. Safety and Health Requirements.

The contractor and the parties involved with this contract will comply with the provisions of the US Army Corps of Engineers EM 385-1-1 Safety and Health Requirements Manual.

Section 810. Buy American Act.

The State covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a, et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

Section 811. Uniform Relocation Assistance and real Property Acquisition Policies

The State covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

Section 812. Copeland "Anti-Kickback" Act.

The State and the contractor and all parties involved with this contract covenants and agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.