



4200  
MCCSPRMT/th  
PNM24-R-36032  
April 17, 2024

This is an invitation for interested parties to submit a written proposal in response to the attached Request for Proposal (RFP) **to provide all labor, materials, equipment, and incidentals to renovate the Pacific Views Marine Corps Exchange (MCX), Bldg. 2010** aboard Marine Corps Base, Camp Pendleton, California.

The site visit will be held **April 26, 2024, at 9:30 AM, Pacific Standard Time**. Directions to the site location and RSVP instructions are available on page 70 of the solicitation. **Attendance is a highly encouraged due to verification of field measurements.**

Written proposal shall be submitted via facsimile, email or in a sealed envelope, and arrive on or before **4:00 PM, Pacific Standard Time, on May 15, 2024**. All proposals received are subject to the terms and conditions cited in this request, the proposed contract (Sections "A" through "M" of the solicitation), Department of Defense Instruction (DODI) 4105.67 and Marine Corps Order (MCO) 7010.20. The contract that is awarded, as a result of this RFP, will be with the Marine Corps Community Services (MCCS), a Federal non-appropriated fund instrumentality (NAFI).

All questions **must be submitted in written form no later than 4:00 PM, Pacific Standard Time, April 30, 2024**, faxed to: (760) 725-6364, attention Ms. Terisa Hoffman or via email to [Terisa.Hoffman@usmc-mccs.org](mailto:Terisa.Hoffman@usmc-mccs.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'R. A. Scott', is written over a horizontal line.

R. A. SCOTT  
Contracting Officer

Copy to: LOG

UNITED STATES MARINE CORPS  
 Marine Corps Community Services (MCCS) Nonappropriated Funds  
**SOLICITATION, OFFER AND AWARD FOR CONSTRUCTION**

1. CONTRACT NUMBER	2. SOLICITATION NUMBER PNM24-R-36032	3. DATE ISSUED 4/17/2024	4. PURCHASE REQUEST NUMBER BaileyRL-2023-10-25-14-29-55 BaileyRL-2023-10-25-11-18-03
5. ISSUED BY AC/S MCCS REGIONAL PROCUREMENT OFFICE – WEST BOX 555020, BLDG 1377 MARINE CORPS BASE CAMP PENDLETON, CA 92055-5020		6. ADMINISTRATION OFFICE ADDRESS (If other than block 5)	

**SOLICITATION**

7. Following the instructions in Section L, send sealed offers for receipt no later than **May 15, 2024, 4:00 PM, PST** per the location in Block 5. All offers are subject to all terms and conditions contained in this solicitation.
8. For information call the Contract Specialist: Terisa Hoffman, at 760-763-9574, [Terisa.Hoffman@usmc-mccs.org](mailto:Terisa.Hoffman@usmc-mccs.org)

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**OFFER**

10. The offeror agrees, if awarded all or part of the items and/or services solicited, to furnish them according to the price(s)/fee(s), terms and conditions contained in the solicitation and offer. This offer will be valid until \_\_\_\_\_ calendar days (60 calendar days unless a different period is entered by offeror) after the established date for receipt of offers.
- |   |                  |      |                  |      |
|---|------------------|------|------------------|------|
| 11. ACKNOWLEDGEMENT OF AMENDMENTS (The Offeror acknowledges receipt of amendments to the Solicitation for offerors and related documents numbered and dated). | AMENDMENT NUMBER | DATE | AMENDMENT NUMBER | DATE |
|   |                  |      |                  |      |
|   |                  |      |                  |      |
|   |                  |      |                  |      |

12. OFFEROR’S NAME AND ADDRESS (Street, City, State & Zip Code)	13. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)
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CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE, AND ENTER THE ADDRESS IN SECTION B OF THE SCHEDULE.

14. PHONE NUMBER & EMAIL ADDRESS	15. SIGNATURE/DATE
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16. The Contractor shall begin performance of contract on _____, and shall complete the project by no later than _____ . The period of performance is: _____ Mandatory <input checked="" type="checkbox"/> Negotiable.	
17. The Contractor is required to furnish any Performance or Payment Bonds. Bonds shall be 100% of award unless otherwise stated. (If YES, indicate how many calendar days after award in Block 18).  <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	18. CALENDAR DAYS <u>TEN (10)</u>
<b>AWARD (To be completed by MCCS)</b>	
19. ACCEPTED AS TO ITEMS NUMBERED HEREIN	20. AMOUNT
21. SUBMIT INVOICES TO: MCCS LOGISTICS ATTN: ROBERT BAILEY BOX 555020, BLDG 2662 MARINE CORPS BASE CAMP PENDLETON, CA 92055-5020	22. PAYMENT WILL BE MADE UPON COMPLETION OF WORK AS MUTUALLY AGREED BY THE CONTRACTING OFFICER'S REPRESENTATIVE AND THE CONTRACTOR AND UPON RECEIPT OF INVOICE
23. NAME OF CONTRACTING OFFICER	24. SIGNATURE OF CONTRACTING OFFICER / DATE

**SECTION B - PRICE SCHEDULE (Nonappropriated Funds)**

**B-1** The Contractor shall provide firm-fixed prices: to provide all labor, materials, equipment, and incidentals to renovate the Pacific Plaza Marine Corps Exchange (MCX), Bldg. 2010 aboard Marine Corps Base, Camp Pendleton, California. The specifications, the time and place of delivery, and any other terms and conditions applicable to this contract, are set forth below or are included at Sections C, F and J of this contract.

**B-2**

CLIN (M)	<u>MATERIALS</u> DESCRIPTION	Quantity	Unit	Unit Price	TOTAL MATERIAL PRICE
00001	Materials:			\$	\$
00002	Other: (i.e.: Profit/Overhead/P&P Bonds, Waivers, Rental Equipment, etc...) Please list:			\$	\$
<b>Total for Materials (CLINs 00001+00002):</b>					\$

CLIN (L)	<u>LABOR</u> DESCRIPTION	# of Crews	# of Crew members	Wage rate per hour	Total Man Hours	TOTAL LABOR PRICE
00003	Installation			\$		\$
00004	Supervisors/Foremen			\$		\$
<b>Total for Labor (CLINs 00003+00004):</b>						\$
<b>GRAND TOTAL FOR MATERIALS &amp; LABOR (CLINs 00001+00002+00003+00004):</b>						\$

**B-3 CONTRACTOR INFORMATION.** Offeror to complete the following:

Company Name: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Street Address: \_\_\_\_\_

Remittance address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Cell: \_\_\_\_\_

FAX: \_\_\_\_\_

E-Mail: \_\_\_\_\_

DUNS number: \_\_\_\_\_

Contractor License No: \_\_\_\_\_

## SECTION C - STATEMENT OF WORK

**C-1 OBJECTIVE.** The Marine Corps Community Services, Marine Corps Base, Camp Pendleton, requires a Contractor: to provide all labor, materials, equipment, and incidentals to renovate the Pacific Plaza Marine Corps Exchange (MCX), Bldg. 2010 aboard Marine Corps Base, Camp Pendleton, California, including the associated services and deliverables described in this contract.

**C-2 GENERAL.** Marine Corps Community Services (MCCS) activities are an integral part of the Department of Defense, and MCCS is a Non-Appropriated Fund Instrumentality (NAFI) of the United States Government. MCCS contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 U.S.C, Chapter 71), in which event MCCS will reimburse the United States Government (31 USC 1304 [c]). MCCS procurement is governed by Department of Defense Instruction (DODI) 4105.67 available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/410567p.pdf> and Marine Corps Order 7010.20 available at <http://www.marines.mil/Portals/59/Publications/MCO%207010.20.pdf>. MCCS provides commanders with an integrated organization for the development and delivery of Quality of Life programs and services. MCCS operates family, fitness and recreation, exchange and business, personal services and other Quality of Life Programs and services for Marines and their families. The administration, management and operation of local MCCS activities are the responsibility of each installation commander.

**C-2.1** MCCS activities are operated on Marine Corps installations located on the east and west coasts of the United States, Hawaii, and Japan.

**C-2.2** MCCS activities are Nonappropriated Fund Instrumentalities of the Federal government, and are therefore subject to directives issued by the Department of Defense, the Secretary of the Navy, and the Commandant of the Marine Corps. The MCCS system generates over one billion dollars in sales per year from a wide variety of business operations. Earnings from its major revenue generators are used to help fund non-revenue generating MCCS programs. Additional information is available at [www.usmc-mccs.org](http://www.usmc-mccs.org).

### **C-3 SCOPE.**

The Contractor shall provide a firm-fixed price to provide all labor, materials, equipment, and incidentals to renovate the Marine Corps Exchange (MCX), Bldg. 2010 aboard Marine Corps Base, Camp Pendleton, California, as provided for herein, using the most current versions of governing guidelines, references and regulations: ASTM International (ASTM); Camp Pendleton Requirements (CPR); Unified Facilities Guide Specifications (UFGS); Unified Facilities Criteria (UFC); International Building Code (IBC); National Fire Protection Agency (NFPA); and general accepted building and industry practices and methods, and any other relevant codes. Site diagrams, as-builts, maps, floor plans and applicable finishes will be provided via website link.

#### **a. Millwork & Cashwraps**

- i. Contractor shall provide and install two (2) new, tandem cashwraps, and one (1) new reception/customer service counter located in the frontline area.
- ii. Contractor shall provide shop drawings to the COR for review and approval prior to fabrication. All millwork and cashwraps shall comply with MCX brand standards.

#### **b. Lighting**

- i. Contractor shall remove all existing fluorescent light fixtures and replace with LA Lighting 2'x4', trim flanged parabolic luminaire with 12 cell egg crate and aluminum interior reflector (FPA620, 12k lumen) with 70-100 FC average in the Retail Area and employee support areas.
- ii. Contractor shall provide and install two (2) safety wires for each 2'x4' light fixture.
- iii. Contractor shall replace all exit signs throughout the facility.

#### **c. Flooring**

- i. Contractor shall remove approx. 108,600 SF of existing VCT and carpet.
- ii. Contractor shall prepare subfloors in accordance with the respective new flooring's manufacturer specifications to ensure a proper installation of the new flooring.
- iii. Contractor shall repair/infill control joints or provide and install a slip sheet over the joints to prevent the transfer to the finished floor.
- iv. Contractor shall ensure a smooth transition at the main entries where the new tile matches up to the dust collectors and where the new tile matches up to the new carpet. All transitions shall be flush.
- v. Contractor shall provide and install approx. 72,518 SF of Patcraft & Designweave carpet tile (color: Custom SP 1/12 MS tile 50 P319s-0) and approx. 36,000 SF of Daltile Match Point, 24"x24" porcelain tile (color: ivory white; SKU: P127 2424G1L) with Custom Building Products CEG-LITE grout (color: #60 Charcoal).
- vi. Contractor shall provide and install approx. 450 LF of Daltile Match Point, 24"x24" porcelain tile (color: ivory white; SKU: P127 2424G1L) as cove base with a tile edger as a cap and Custom Building Products CEG-LITE grout (color: #60 Charcoal) in all areas where porcelain tile meets a wall.
- vii. Contractor shall provide and install approx. 1,600 LF of Johnsonite, 4" rubber cove base (color: TCB-69 Sterling Silver) in all areas where carpet meets a wall.

**d. Exterior Signage**

- i. Contractor shall remove and re-powder coat the existing "MCX" exterior signs. Contractor shall reinstall the signs in the existing locations.
- ii. Contractor shall remove, refinish, and reinstall one (1) sign at a time.

**e. Restrooms**

- i. Contractor shall remove all existing partitions and urinal screens and replace with Rimex 304SS (pattern 5-SM, satin finish) stainless steel partitions and screens. The new partitions and urinal screens shall be installed in the existing configurations and shall have a minimum clearance of 9" from the finished floor.
- ii. Contractor shall have all four (4) restrooms professionally deep cleaned, including but not limited to tile, grout, counters, fixtures, etc.

**f. Cooler Maintenance**

- i. Contractor shall replace all door seals on the existing walk-in unit. New door seals shall be a polyvinyl chloride (PVC) bulb type, double lined magnetic steel core gasket on three (3) sides for a positive seal. Doors shall have an adjustable vinyl wiper gasket for seal at threshold. All gaskets shall be easily replaceable and resistant to damage from oils, fats, water and detergents.
- ii. Contractor shall ensure the condensers, evaporators and line sets are operational and all units are fully charged. Contractor shall notify MCCS of any deficiencies prior to taking corrective action.

**g. Electrical**

- i. Contractor shall conduct an electrical system load study to ensure the sufficient support to the new requirements. The new electrical requirements include approx. thirty-five (35) new receptacles and an additional forty (40) locations that will require lighting for the new sales fixtures.
- ii. Contractor shall provide and install 110/120V, 20 amp, floor mounted quad outlets, to match existing.

**h. Communications**

- i. Contractor provide and install a total of sixteen (16) CAT6 data lines to support seven (7) self-checkouts and one (1) podium (two (2) lines per location).
- ii. Contractor shall provide and install two (2) CAT6 data lines to support the hunting/fishing kiosk at the Gun Counter.
- iii. Contractor shall provide and install a total of eight (8) CAT6 data lines to support three (3) registers and one (1) Apple computer in the Electronics Department (two (2) lines per location).
- iv. Contractor shall relocate two (2) CAT6 data lines to support two (2) registers in the Jewelry Department.

- v. Contractor shall provide and install a total of six (6) CAT6 data lines at three (3) "New AP Device" locations. Each line shall have a minimum of 30 LF service loop to be staged within the drop ceiling. Lines will be fed to wireless access points furnished and installed by MCCS.

**i. Doors**

- i. Contractor shall remove the existing twelve (12), swing type, automated, main entry doors and replace with an automated bi-parting door system with clear, insulated, tempered glass and aluminum frame. Glass shall be secured with new glass stops. Contractor shall ensure new door systems comply with ANSI 156.10.
- ii. Contractor shall provide and install activation and safety sensors required.
- iii. Contractor shall provide and install a full breakout or sliding panel breakout for emergency exit and new threshold on each door.
- iv. Contractor shall provide and install aluminum break metal to exiting jambs, as needed.
- v. Contractor shall provide and install ¾" plywood over any storefront space left open at the end of each day, for security.
- vi. Contractor shall convert the existing Garden Center door to an automatic ADA door system to include walk-up sensors on both sides of the door.

**j. Garden Center**

- i. Contractor shall provide and install approx. 280 LF of non-permeable, shade fabric on the iron fence surrounding the perimeter of the Garden Center. Fabric color TBD.
- ii. Contractor shall repair the leak between the Garden Center and exterior "East" wall and the standing seam metal roof covering the Garden Center (approx. 85 LF).
- iii. Contractor shall ensure the existing flashing and gutter system are operational. Contractor shall notify MCCS of any deficiencies.

**C-4. CONTRACTOR'S RESPONSIBILITIES.**

- a. Providing sufficient waste receptacles for all construction debris. Accounting for, transporting and removing all debris and unused material that result from the services provided herein from premises and disposing appropriately off base on a daily basis.
- b. Providing a safety oversight that includes a minimum of one (1) competent person at each project site to function as the Safety and Health Officer, (SSHO). The SSHO shall be at the work site at all times, unless specified differently in the contract, to perform safety and occupational health management, surveillance, inspections and safety enforcement for the Contractor. The Project Superintendent can be the SSHO. One individual can be the quality control, site safety officer and superintendent, and perform duties. SSHO training, experience, and qualifications shall be as required by US Army Corps of Engineers, EM 385-1-1, "Health and Safety Requirements", paragraph 01.A.17 and all associated sub-paragraphs.
- c. Taking appropriate field measurement verifications.
- d. Submitting a safety/hazard plan to MCCS prior to the date that on-site work begins.
- e. Submitting weekly certified payroll submittals in compliance with the Wage Rate Requirements statute (formally known as Davis Bacon Act).
- f. Providing payment and performance bonds when contract price exceeds thirty thousand dollars (\$30,000.00).
- g. Providing a performance schedule within ten (10) business days after award of contract.
- h. Submit an accident prevention plan within ten (10) business days after award of contract, that must be reviewed and approved by the Contracting Officer prior to the Contractor starting work.
- i. Providing weekly safety reports and project progress reports to the COR.
- j. Ensuring all individuals used in the completion of this project follow all safety regulations and utilize PPE.
- k. Providing all equipment necessary for the completion of the project, including but not limited to temporary construction fence, scissor-lifts, ladders, plastic coverings, portable toilets, etc.



- l. Coordinating material deliveries and protecting stored project materials once delivered.
- m. Protecting the surrounding area to ensure no damage occurs to the facility. Any damage to the facility as a result of the Contractor providing the services herein shall be the Contractor's responsibility.
- n. Submitting design submittals at 65%, 100%, and final.
- o. Providing "wet stamped" engineered drawings.
- p. Scheduling progress walk-thru/inspections with M CCS at 50%, 75%, and final completion.
- q. Submitting a request for final inspection to M CCS in writing, seven, (7) days prior to the completion of the project. Prior to the Final Inspection, a pre-final inspection (100%) will be conducted. Typically, the pre-final takes place two (2) weeks prior to the Final Inspection, so that a "punch list" can be made and completed prior to the Final Inspection.
- r. Providing as-builts (6 copies D-sheets) and O&Ms, (both hard copy and on CD (PDF and AUTOCAD). These documents must be received by M CCS before final payment is requested and released.
- s. Any changes to the "approved drawings" or approved design submittals must be submitted to M CCS for review and approval prior to construction.
- t. Providing design and material submittals to M CCS for review and approval prior to ordering and commencement of work. M CCS will respond to submittals and Requests for Information (RFI) within fifteen (15) business days, from date of receipt.
- u. Ensuring the architect of record or an independent inspector (not affiliated with the Contractor or its subcontractors) conducts construction observation site visit(s) prior to M CCS inspection(s), to ensure design and code compliance.
- v. Providing a six (6) and eleven (11) month warranty walk-thru, to be scheduled with the COR during the final inspection.

**SECTION D - SITE DIAGRAMS**

All site diagrams and supporting documents will be provided via website link.

**SECTION E - INSPECTION AND ACCEPTANCE**

**E-1 GENERAL**

**E-1.1** The Contractor agrees that authorized representatives of M CCS will have access, at all reasonable times, to inspect any work performed under this contract.

**E-1.2** In case any products or services are defective or not acceptable in material or workmanship, or otherwise do not conform with the requirements of this contract, M CCS shall have the right to reject such products or services, and to require replacement or correction within 24 hours of notification of such problems. The Contractor, after notice of defect or non-conforming products or services or any part thereof, shall be responsible for any shipping charges and handling costs to and from the Contractor's facility for such rejections, corrections, and replacements as well as any administrative costs that may be incurred.

**E-2 ACCEPTANCE**

**E-2.1** Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

**E-2.2** For the purposes of this contract, the proper invoice date referenced in Section I shall be the same date as the date of acceptance as approved by the COR. The COR will sign the work acknowledging that work was completed satisfactorily and has been accepted.

**SECTION F - DELIVERABLES AND PERFORMANCE**

**F-1 DELIVERABLES.** The Contractor shall provide the products and services listed and described in Sections B, C, and J, of this contract.

**F-2 ENTRANCE MEETING.** The Contractor shall coordinate an entrance meeting not later than five (5) business days after contract award or as otherwise required by the COR.

**F-3 PERFORMANCE.** The Contractor will perform the tasks identified in Section C of this contract in a professional manner. Contractor warrants that upon completion and for a period of one year, unless otherwise specified herein, following completion of the services provided by it hereunder ("Warranty Period"), such services will have been performed in a good and workmanlike manner in accordance with applicable professional standards. Contractor's obligation under this warranty is to use its best efforts to correct, at its expense, any failure of its services to conform to the foregoing warranty if it is notified of such failure in writing within the Warranty Period. If requested by MCCA to investigate a suspected problem, Contractor will advise MCCA whether in Contractor's opinion the problem is covered by the Warranty. If Contractor determines it is not covered by warranty and MCCA agrees and still desires corrective action, a fixed price task order will be negotiated for the correction. Failure of parties to agree will be a dispute handled under the disputes clause.

**SECTION G - CONTRACT ADMINISTRATION DATA**

**G-1 EFFECTIVE DATE OF CONTRACT AND CONTRACT PERIOD**

**G-1.1** The effective date of the contract is the date of contract award through the period that work shall be completed.

**G-1.2** The contract shall be automatically terminated in the event of the discontinuance of the operation of MCCS without cost or liability to the government. In all other instances, the provisions covering termination as set forth in Section I shall apply.

**G-2 APPOINTMENT OF CONTRACTING OFFICER'S REPRESENTATIVE**. The Contracting Officer will appoint a Contracting Officer's Representative (COR) to serve as the Point of Contact (POC) for the Contractor. The responsibilities of the COR are outlined below.

- a. Serve as liaison between the Contractor and Contracting Officer.
- b. Oversee Contractor's performance.
- c. Handle routine correspondence.
- d. Maintain administrative contract file(s) and provide Contracting Officer with copies of all correspondence and administrative documentation.
- e. Conduct labor interviews and collect certified payrolls.
- f. Inspect and, if appropriate, accept products and services.
- g. Review and, if appropriate, approve invoices for payment.
- h. Perform other tasks as designated by the Contracting Officer.

**G-2.1 CONTRACT CHANGES**. The COR may not change the terms or conditions of this contract, may not interpret it, nor execute or agree to any contract modifications thereto. Only the Contracting Officer can authorize modifications to the terms and conditions of this contract, including deviations from specification requirements. In the event that the Contractor does deviate without written approval of the Contracting Officer, such deviation shall be at the Contractor's own risk. Any costs related to the Contractor's unauthorized deviation shall be borne by the Contractor.

**G-2.2** The Contractor will be provided a copy of the COR appointment letter.

**G-3 INVOICING AND PAYMENT**. Contractor shall submit a proper invoice as stated in Section I of this contract to the address at Section A-21 and payment will be authorized after COR acceptance as defined in Section E, "Inspection and Acceptance."

**G-4 CONTRACTOR'S PERSONNEL**. The Contractor's personnel shall possess the professional skills and experience to perform the contract requirements. Any substitutions of the Contractor's personnel shall be made with personnel who have an equal or higher degree, professional skills and experience as the personnel that previously performed contract requirements. Contractor agrees that all its personnel shall be required to comply with the MCCS security clearance policies applicable from time to time regardless of COR approval.

**G-5 TRAVEL**

**G-5.1** All travel expenses including air, car rental, lodging, meals, and incidentals are included in the contract amount as identified in the contract. The Contractor shall be responsible for all travel expenses. The Contracting Officer shall be responsible for issuing the Contractor's Identification Letter and installation access requirements in coordination with the COR.

## **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

### **H-1 MCCS-CONTRACTOR RELATIONSHIP**

**H-1.1** The MCCS and the Contractor understand and agree that the products and services to be delivered under this contract by the Contractor to the MCCS are non-personal services and the parties recognize and agree that no employer-employee or master-servant relationships exist or shall exist under the contract between the MCCS and the Contractor and-or between the MCCS and the Contractor's employees. It is, therefore, in the best interest of the MCCS to afford the parties a full and complete understanding of their respective obligations.

**H-1.2** Contractor personnel under this contract shall not be placed in a position where they are appointed or employed by a Federal officer, or are under the supervision, direction, or evaluation of a Federal officer, military or civilian.

### **H-2 INSURANCE REQUIREMENTS.**

a. The Contractor shall procure and maintain, during the performance of this contract, insurance coverage listed below, with insurance companies acceptable to Marine Corps Community Services (MCCS) and Headquarters Marine Corps, NAF Business and Support Services Division (MR). Acceptable is defined as a carrier that is A rated by A.M. Best, Inc., or equivalent. All insurance coverage shall name the United States and MCCS activities as additional insureds and will carry an endorsement waiving the Contractor's right to subrogation against the United States, MR, and MCCS.

b. The Contractor shall provide a Certificate of Insurance to the Contracting Officer within ten (10) business days from contract award. The Certificate of Insurance must show the United States, MR, and MCCS as an additional insured for all coverages, and will carry an endorsement waiving the Contractor's right to subrogation against the United States, MR, and MCCS. The "INSURED" block of the Certificate of Insurance must list both the Contractor's name and the MCCS contract number. Such Certificates of Insurance shall evidence that the below listed insurance is in effect, and that not less than thirty (30) days prior written notice shall be provided to the Contracting Officer in the event of modification, cancellation or non-renewal of any such insurance coverage.

**H-2.1 Comprehensive General Liability Insurance.** Contractor shall maintain the following types and minimum amounts of insurance:

\$1,000,000 Per Occurrence / \$2,000,000 Total Policy Aggregate  
\$1,000,000 Personal Injury/Advertising Injury  
\$2,000,000 Products and Completed Operations Aggregate

**H.2.2 Workers' Compensation and Employer's Liability Insurance.** The Contractor shall carry a workers' compensation and employer's liability policy which provides statutory benefits covering all their employees in those states where they are located and working at MCCS facilities, or in support of MCCS. Contractor shall maintain the following types and minimum amounts of insurance:

\$1,000,000 per employee / per claim / per occurrence  
\$1,000,000 per claim / per occurrence for occupational illness or disease

**H.2.3 Automobile Bodily Injury and Property Damage Liability Insurance.** The Contractor shall maintain business auto insurance covering all owned, non-owned, and leased vehicles with a combined single limit of \$1,000,000 and a \$2,000,000 aggregate policy limit.

**H-2-3 Property Insurance Coverage.** The Contractor shall obtain and maintain Insurance Services Office, Inc. (ISO) Special Form (special causes of loss - commonly known as "all risk") insurance coverage for all risks including and without limitation, fire, flood, windstorm, earthquake, vandalism, malicious mischief, and extended coverage, that insures all locations, fixtures, and other property leased, licensed, occupied or otherwise authorized for use by MCCS to the Contractor pursuant to this contract, and the Contractor's

owned or leased equipment, fixed assets, supplies, and inventory for the full replacement value thereof, without deduction for depreciation. The form of the policy shall not require any co-insurance payment on the part of MCCS. The Contractor agrees to waive subrogation against the United States and the MCCS.

c. The Contractor agrees to require that all subcontractors purchase and maintain, at their expense, insurance coverage acceptable to MCCS at the same limits set forth for the Contractor in this paragraph and furnish MCCS with certificates of such insurance on request.

### **H-3 PUBLIC DISCLOSURE OF WORK UNDER THIS CONTRACT**

**H-3.1** Public disclosure of information derived from or knowledge gained as a result of work under this contract whether by press release, word of mouth, written correspondence, or any other means is prohibited without the advance written consent of the Contracting Officer. Any request for authority to release such information will be made in writing and submitted by the Contractor to the Contracting Officer. Each request will be documented with sufficient evidence to justify the requested release as being in the best interest of the public. Final determination with regard to the necessity of public disclosure of such information remains solely with the Contracting Officer.

**H-3.2** As used in this clause, the prohibition against "public disclosure" is defined to include a prohibition against disclosure to any governmental agency or unit other than the MCCS or the Commandant of the Marine Corps (CMC), as well as any individual or group of individuals outside of MCCS or CMC.

**H-3.3** Contractor agrees to insert the clause in paragraphs H-3.1 and H-3.2, above, in any and all subcontracts hereunder relating to performance of work under this contract.

**H-4 DATA TO BECOME PROPERTY OF MCCS**. All analyses, evaluations, recommendations, notes and other work developed in the performance of this contract will be and remain the sole property of MR or MCCS and the United States Marine Corps and may be used on any other work without additional cost to MR or MCCS and the United States Marine Corps and with respect thereto, the Contractor agrees not to assert any rights and not establish any claim under the design, patent or copyright laws. The Contractor, for a period of 3 years after completion of this project, agrees to furnish and provide access to the originals or copies of all such materials on the request of the Contracting Officer without additional compensation to the Contractor.

### **H-5 INCREASING THE MINIMUM WAGE FOR CONTRACTORS (ACNH 0040, NAFLI 1034.1, OCT 2023)**

a. Executive Order 14026. This contract is subject to Executive Order 14026, the regulations issued by the Secretary of Labor in 29 CFR part 23 pursuant to the Executive Order, and the following provisions.

b. Minimum wages

(1) Each worker (as defined in 29 CFR 23.20) engaged in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 14026.

(2) The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 14026 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 14026 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the Contracting Officer, or other agency official overseeing this contract shall ensure the Contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023. The Secretary of Labor will publish annual determinations in the **Federal Register** no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on <https://alpha.sam.gov/content/wagedeterminations>

(or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(3) The Contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 23.230), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime Contractor and any upper tier subcontractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the Contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker performing work on or in connection with a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the Contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the Contractor must pay the worker the greater commensurate wage.

c. *Withholding.* The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime Contractor under this or any other Federal contract with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 14026.

d. *Contract suspension/Contract termination/Contractor debarment.* In the event of a failure to pay any worker all or part of the wages due under Executive Order 14026 or 29 CFR part 23, or a failure to comply with any other term or condition of Executive Order 14026 or 29 CFR part 23, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a Contractor and subcontractor as provided in 29 CFR 23.520.

e. *Workers who receive fringe benefits.* The Contractor may not discharge any part of its minimum wage obligation under Executive Order 14026 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

f. *Relation to other laws.* Nothing herein shall relieve the Contractor of any other obligation under Federal, state or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a Contractor to pay less than \$15.00 (or the minimum wage as established each January thereafter) to any worker.

g. *Payroll records.*

(1) The Contractor shall make and maintain for three years records containing the information specified in paragraphs (g) (1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number;
- (ii) The worker's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker;
- (v) Any deductions made; and
- (vi) Total wages paid.



(2) The Contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 23 and this contract, and in the case of failure to produce such records, the Contracting Officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

h. *Flow-down requirement.* The Contractor (as defined in 29 CFR 23.20) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. Executive Order 14026 does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment, and this clause is not required to be inserted in such subcontracts. The prime Contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with this contract clause.

i. *Certification of eligibility.*

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

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

j. *Tipped employees.* In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the Contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 14026. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the Contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 14026. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

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

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct

wages and tip credit.

k. *Antiretaliation.* It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or 29 CFR part 23, or has testified or is about to testify in any such proceeding.

l. *Disputes concerning labor standards.* Disputes related to the application of Executive Order 14026 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 23. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

m. *Notice.* The Contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the Contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any website that is maintained by the Contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

**H-6 ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS (ACNH 0051 21 Dec 2016).**

a. Paid Sick Leave

(1) This contract is subject to Executive Order (EO) 13706 and to the regulations issued by the Secretary of Labor pursuant thereto at 29 CFR part 13 (Establishing Paid Sick Leave for Federal Contractors). 29 CFR part 13, Appendix A, is hereby incorporated by reference, having the same force and effect as if set forth in full in this contract. Refer to <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22964.pdf>

(2) The Contractor shall establish a sick leave policy in full compliance with the applicable provisions of EO 13706 and 29 CFR part 13.

(3) This clause applies to all subcontracts where EO 13706 and 29 CFR part 13 apply to the prime contract. Accordingly, the Contractor is responsible for subcontractor compliance with EO 13706, 29 CFR part 13, and the requirements of this clause. The Contractor shall include this clause, including this paragraph, in all subcontracts where applicable.

(4) The Contractor may be subject to penalties for noncompliance as described in 29 CFR §13.44.

**H-7 COVID 19 PROCEDURES FOR INSTALLATION ACCESS (ACNH 0056 APR 2023)**

a. While on an installation, the Contractor and all subcontractors shall strictly adhere to all Centers for Disease Control and Prevention (CDC) recommended safety guidelines/regulations, and applicable Installation guidelines/regulations pertaining to COVID-19. The Contractor shall request from the COR and ensure receipt of the latest information pertaining to Installation access and COVID-19 procedures and restrictions. COVID-19-related delays in the performance of this contract, if any, must be projected as far in advance as possible and the Contractor must notify and coordinate with the COR. The Contractor shall include COVID-19 safety measures and prevention in substantial conformance with applicable installation guidelines/regulations in their Safety Program/Plan, if one is required by the contract. Contractor and subcontractor personnel

feeling ill, especially those with fever, cough, sore throat, headache, and aches and pains, must not report to the job site/Installation for work, and shall be encouraged to complete COVID-19 testing. Notify the Contractor and COR immediately if any Contractor or subcontractor personnel working on an installation tests positive for COVID-19. Those with a positive COVID-19 test result or those that do not wish to obtain testing should be encouraged to follow the latest CDC guidelines or Installation guideline, whichever is more restrictive, before returning to the site/Installation.

**H-8 AFFIRMATIVE ACTION GOALS (ACNH 0011 MAR 2023)**

In reference to the Affirmative Action Compliance Requirements for Construction (GPC-055) contract clause, the current female goal is 6.9 percent of work hours. Additional information is available at <https://www.dol.gov/agencies/ofccp/construction>.

## **SECTION I - CONTRACT CLAUSES**

### **I-1 DEFINITIONS (ACNI 0001 JUN 2022)**

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

a. "MR" refers to Business and Support Services Division, Headquarters, United States Marine Corps; "MCCS" refers to Marine Corps Community Services activities; "MCX" refers to the Marine Corps Exchange. MR, MCCS, and MCX are Non-Appropriated Fund Instrumentalities (NAFI).

b. "NAFI" refers to an instrumentality of the Federal Government established to generate and administer nonappropriated-funds for programs and services, including resale activities through MCX, contributing to the mental and physical well-being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

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

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

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

f. The term "Contracting Officer's Representative" (COR) means a person appointed in writing by a Contracting Officer to monitor performance and act as a liaison between the contractor and the Contracting Officer.

### **I-2 LEGAL STATUS (ACNI 0002 JUN 2022)**

MR, MCCS, and MCX are integral entities of the United States Marine Corps operating as NAFIs. NAFI contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 USC Chapter 71), in which event the NAFI will reimburse the United States Government (31 USC §1304(c)). MCCS procurement is governed by Department of Defense Instruction (DODI) 4105.67 available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/410567p.pdf?ver=2019-03-22-095354-913> and Marine Corps Order 7010.20 available at <https://www.marines.mil/News/Publications/MCPPEL/Electronic-Library-Display/Article/900392/mco-701020/>. In accordance with DoDI 4105.67, no appropriated funds of the United States will be obligated, due, or payable to a contractor under this contract. (NOTE: The Federal Acquisition Regulation (FAR) published pursuant to the Office of Federal Procurement Policy Act of 1974, as amended, applies to procurements with appropriated funds. It does not apply to MCCS procurement except for those provisions of the FAR that have been administratively adopted by MCCS or incorporated by reference in the contract.)

### **I-3 EXAMINATION OF RECORDS (ACNI 0003 JUN 2022)**

a. This clause is applicable if the amount of this contract exceeds the simplified acquisition threshold and the contract was entered into by means of negotiation. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three (3) years after final payment under the contract. This clause does not require

contractor to create or maintain any record that the contractor does not maintain in its ordinary course of business.

b. The Contractor agrees to include paragraph a., above, in all subcontracts that exceed the simplified acquisition threshold when used in performance of this contract.

**I-4 OFFICIALS NOT TO BENEFIT (ACNI 0004 MAR 2009)**

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

**I-5 GRATUITIES (ACNI 0005 SEP 2021)**

a. The NAFI may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing by the Contracting Officer, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the government or the NAFI with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.

b. In the event this contract is terminated as provided in paragraph a., above, the NAFI shall be entitled (1) to pursue the same remedies against the Contractor as it would pursue in the event of a breach of contract by the Contractor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount determined by the Contracting Officer, which shall not be less than three nor more than ten times the cost incurred by the Contractor or by the organization to which the Contractor is affiliated that engaged in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**I-6 ORAL REPRESENTATIONS (ACNI 0006 JUN 2022)**

This written contract includes the entire agreement between the parties. The NAFI will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. Nor will the NAFI be bound by any terms on Contractor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Contracting Officer.

**I-7 CHANGES (ACNI 0007 JUN 2022)**

a. The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following: (a) specifications (including drawings and designs); (b) time or place of delivery; (c) method or manner of performance of the work; (d) NAFI-furnished facilities, equipment, materials, services, or site; or (e) accelerating the performance of work.

b. If any such change causes an increase or decrease in the cost of performing this contract, the Contracting Officer will make an equitable adjustment in the contract price and the contract will be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change.

c. Claims for constructive changes to the contract will not be considered, except for contracts subject to the Contract Disputes Act.

**I-8 REPRESENTATIONS (ACNI 0008 JUN 2022)**

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

**I-9 ADVERTISEMENTS (ACNI 0009 JUN 2022)**

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

b. The Contractor further agrees that none of its, nor its agent's, advertisements to include publications, merchandise, promotions, coupons, sweepstakes, contests, sales brochures, or other media, shall state, infer, or imply that the contractor's products or services are approved, promoted, or endorsed by the NAFI or any element of the U.S. Government. Any advertisement, including cents off coupons, which refers to a NAFI will contain a statement that the advertisement is neither paid for nor sponsored, in whole or in part, by that particular activity.

**I-10 SUBCONTRACTS (LABOR STANDARDS) (ACNI 0010-a SEP 2014)**

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

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

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

**I-11 ASSIGNMENT (ACNI 0011 SEP 2021)**

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

**I-12 REPRESENTATIVES (ACNI 0012 SEP 2021)**

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

**I-13 TAXES (ACNI 0013 JUN 2022)**

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

- (1) by reason of status as a NAFI of the United States government; or
- (2) by reason of MR and MCCA immunity from direct state or local taxation; or
- (3) by reason of federal, state, or local tax exemptions for sales to the U.S. Government; or
- (4) otherwise, such as items purchased for export.

b. It will be the sole responsibility of Contractor to demonstrate, to the reasonable satisfaction of the Contracting Officer, the applicability and amount of any taxes which are included in the prices charged to the NAFI. The Contracting Officer, upon request, will

furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

c. The Contractor is liable for all taxes applicable to its property and income, and all of its transactions arising out of or in connection with the performance of this contract. The Contractor will not be reimbursed by the NAFI for any direct or indirect tax properly and legally imposed on the Contractor by reason of this contract or otherwise.

d. Sales Tax. Per 4 USC 105, where a state or local law imposes a sales tax on the Contractor's sale of items or services, the sales tax will be collected from the customer and paid directly by the Contractor to the appropriate tax collection agency.

**I-14 PERMITS AND RESPONSIBILITIES (ACNI 0014-a SEP 2014)**

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

**I-15 NON-WAIVER OF DEFAULTS (ACNI 0015 SEP 2021)**

Failure by the NAFI to insist on the strict performance of any provision of this contract, to exercise any right or remedy or, to accept nonconforming services or supplies does not constitute a waiver of any breach of any provision of this contract. Failure to insist on procurement terms and conditions does not waive, affect or impair such terms and conditions or waive, affect or impair the NAFI's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

**I-16 INDEMNIFY AND HOLD HARMLESS (ACNI 0016 JUN 2022)**

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

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

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

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

b. The Contracting Officer will give Contractor notice and an opportunity to defend.

**I-17 INSURANCE (ACNI 0017 MAR 2009)**

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

**I-18 ITEM SUBSTITUTION AND VARIATION IN QUANTITY (ACNI 0019 SEP 2021)**

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

**I-19 INSPECTION OF CONSTRUCTION (ACNI 0021-a SEP 2014)**

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

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

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

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

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

(3) Constitute or imply acceptance; or

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

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

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

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

**I-20 WITHHOLDING (ACNI 0023-a SEP 2015)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Construction Wage Rate Requirements Act (formerly known as Davis-Bacon Act) prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice



to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**I-21 DISPUTES (MCCS) (ACNI 0024 JUN 2022)**

a. This contract is not subject to the Contract Disputes Act of 1978 (41 U.S. Code Chapter 71). All disputes arising under or relating to this contract will be resolved under this clause.

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

c. Contractor shall submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. A Contractor request shall not be considered a claim unless submitted in writing to the Contracting Officer within 90 days after termination of performance under the contract. This clause will not extend the period for filing claims which is further limited by another clause of the contract. The request shall specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

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

\_\_\_\_\_  
(Signature of Individual Authorized to Bind Contractor)"

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

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

- (1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,
- (2) A dispute arises between the parties after a reasonable time for review and disposition, and
- (3) Contractor requests the Contracting Officer to issue a final decision.

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

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

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

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

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

**I-22 TERMINATION (ACNI 0026 JAN 2022)**

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

a. Termination for Convenience. M CCS may terminate performance of work under this contract in whole or in part if the Contracting Officer determines that a termination is in the M CCS's best interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(1) After receipt of a Notice of Termination, and except as otherwise directed in writing by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(a) Stop work as specified in the notice.

(b) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(c) Terminate all subcontracts to the extent they relate to the work terminated.

(d) Assign to M CCS, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the NAFI shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(e) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(f) As directed by the Contracting Officer, transfer title and deliver to M CCS:

(i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to M CCS.

(g) Complete performance of the work not terminated.

(h) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the NAFI has or may acquire an interest.

(i) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (1)(f) of this clause. The Contractor, however, is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(2) The Contractor shall submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 60-day period.

(a) The Contractor shall submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer.

(b) The Contractor may request the NAFI remove those listed items or the parties may enter into an agreement for their storage. Within 15 days of submission of the list, M CCS will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify and correct list discrepancies upon removal of the items. If the items are stored in accordance with a storage agreement then, the Contracting Officer will verify and correct the list within 45 days from the Contractor's submission of the list or correct the list, as necessary, before final settlement.

(3) After termination, the Contractor shall submit a final termination settlement proposal in writing to the Contracting Officer in the form and with the certification

prescribed by the Contracting Officer. Contracting Officers will consider final termination settlement proposals only when received within 90 days after notice of termination of any part of performance under the contract. If the Contractor fails to submit a final proposal in the form and manner prescribed by the Contracting Officer within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(4) Subject to paragraph (3) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, may not exceed the total contract price as reduced by the amount of payments previously made and the contract price of work not terminated. The contract shall then be modified, and the Contractor paid the agreed amount. If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall provide a determination in accordance with the disputes clause of this contract.

b. Mutual Termination. In circumstances where a contract has been established, the Contracting Officer may use this section to terminate a contract at no additional cost to MCCS. Under these conditions the contract may be terminated by mutual agreement of MR or MCCS and the Contractor at any time by contract modification.

c. Termination for Default.

(1) MCCS may, subject to below subparagraphs (4) and (5) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(a) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(b) Make progress, so as to endanger performance of this contract (but see paragraph (2) of this clause); or

(c) Perform any of the other provisions of this contract (but see paragraph (2) of this clause).

(2) MCCS's right to terminate this contract under subdivisions (a)(b)(c) above of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(3) If MCCS terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the NAFFI for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(4) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics or pandemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(5) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(6) If this contract is terminated for default, MCCS may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(7) MCCS shall pay contract price for completed supplies and services delivered and accepted. The Contractor and Contracting Officer shall negotiate the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to reach a negotiated agreement will be a dispute under the Disputes clause and will be issued as a final decision by the KO. MCCS may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect MCCS against loss because of outstanding liens or claims of former lien holders.

(8) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MCCS.

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

**I-23 REQUESTS FOR MONETARY OR OTHER RELIEF (ACNI 0027 MAR 2009)**

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

**I-24 NOTIFICATION OF DEBARMENT OR SUSPENSION STATUS (ACNI 0028 SEP 2021)**

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

**I-25 CONVICT LABOR (ACNI 0032 SEP 2021)**

Except as provided in 48 CFR 52.222-3, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment.

**I-26 DRUG-FREE WORK PLACE (ACNI 0033 SEP 2021)**

The Contractor will comply with the requirements of the Drug-Free Workplace Act of 1988 (41 USC 8102. Drug-free workplace requirements for Federal Contractors.)

**I-27 ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION (ACNI 0034 JUN 2022)**

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

**I-28 ENVIRONMENTAL PROTECTION (ACNI 0035-A JUN 2022)**

The Contractor shall comply with all federal, state and local regulations and abide by all installation and NAFI policies with regard to environmental regulations. Under no circumstances shall the Contractor independently discuss, and/or settle, environmental issues arising under this contract with a United States agency or state or local government without the written concurrence of the NAFI. Applicable regulations include, but are not limited to, installation orders (available from the COR), which includes the following provisions:

a. Disposal of hazardous waste and electronic wastes (e.g. batteries and light bulbs) in installation landfills, as well as any solid waste receptacle on the installation, is strictly prohibited.

b. Any leftover product that is labeled with "danger," "warning," "toxic," "caution," "poison," "flammable," "corrosive," or "reactive" is considered a household hazardous waste. Examples include household items such as paints, pest control agents, adhesives and cleaning supplies. The disposal of household hazardous waste in dumpsters, trashcans or any other trash receptacle is strictly prohibited.

c. Universal waste is a subset of hazardous waste that poses a lower risk to people and the environment than other hazardous wastes. Examples of common universal wastes include batteries (AA, AAA, C-cells, D-cells and button cell batteries); electronic devices; fluorescent light tubes and bulbs; high intensity discharge lamps; mercury switches, thermometers and thermostats; and non-empty aerosol cans. Disposal of universal waste in any trash receptacle is prohibited.

d. Electronic Waste (E-waste). The State of California prohibits E-waste disposal as household waste and requires disposal of E-waste only at authorized locations. The disposal of E-waste in dumpsters, trashcans, or at any location not expressly authorized to receive E-waste is strictly prohibited.

e. Recyclable materials shall be placed in recycling containers, not in trash containers. Trash shall not be placed in recycling containers.

f. No hazardous materials of any kind, trash/garbage, or other refuse will be dumped or allowed to be introduced into any groundwater basin, stream, or water body.

g. Contractor shall immediately report any violation of environmental regulations currently in progress by calling 911, and report any prior violations of environmental regulations to the installation provost marshal.

**I-29 PERSONAL IDENTIFICATION OF CONTRACTOR PERSONNEL (ACNI 0036 JUN 2022)**

Contractor and any subcontractors shall comply with applicable NAFI identity verification procedures, installation access requirements, and security clearance policies. In addition, Contractor personnel performing contracted services on a government facility/installation shall produce, upon request, personal identification in the form of state or federal identification cards such as a driver's license, passport or other official identification at the Contracting Officer's or COR's request. Contractor personnel, when performing on installations, shall display distinguishing badges or other visible identification that identifies them as contractor personnel and not NAFI personnel. In addition, contractor personnel shall clearly identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

**I-30 RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (ACNI 0037 SEP 2021)**

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

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

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

**I-31 GREEN CLAUSE (ACNI 0038 APR 2012)**

MR and MCCA encourages Contractors/vendors to embrace, establish, and promote environmentally "Green Initiatives." The Contractor shall accomplish this by:

- a. Utilizing environmentally friendly products, where possible.
- b. Promoting energy-efficiency and water conservation, where possible.

c. Eliminating/reducing the production or generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal), where possible.

**I-32 DISPUTES CONCERNING LABOR STANDARDS (ACNI 0040 SEP 2014)**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**I-33 CONTRACT TERMINATION - DEBARMENT (ACNI 0041 SEP 2015)**

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

**I-34 PROTECTING THE MR OR MCCA'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT (ACNI 0042 JUN 2022)**

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

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

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

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being (or proposed to be) on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion (or proposed inclusion) on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

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

**I-35 LIQUIDATED DAMAGES - CONSTRUCTION (ACNI 0043 SEP 2014)**

a. If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the MR or M CCS in the amount of \$2,650.00 for each business day of delay until the work is completed or accepted.

b. If the M CCS 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.

**I-36 COVENANT AGAINST CONTINGENT FEES (ACNI 0044 SEP 2014)**

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

**I-37 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (ACNI 0045 SEP 2014)**

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

**I-38 TIME EXTENSIONS (ACNI 0046 SEP 2014)**

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

**I-39 NOTICE TO THE M CCS OF LABOR DISPUTES (ACNI 0047 NOV 2007)**

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

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

**I-40 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (ACNI 0048 SEP 2015)**

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

b. Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph a. of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the MR or M CCS. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard

workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

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

d. Payrolls and basic records.

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

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

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

**I-41 CONSTRUCTION WAGE RATE REQUIREMENTS (PREVIOUSLY KNOWN AS DAVIS-BACON ACT) (ACNI 0049 SEP 2015)**

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



all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

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

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

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

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

e. Subparagraphs "a" through "d" of this clause shall apply to this contract to the extent that it is (1) a prime contract with the government subject to the Wage Rate Requirements, or (2) a subcontract also subject to the Wage Rate Requirements under such prime contract.

f. Each wage determination listed below establishes the applicable minimum monetary wages and fringe benefits to be provided to Contractor employees performing services under this contract.

<u>Location</u>	<u>WD#</u>	<u>Modification#</u>	<u>WD Date</u>	<u>State/County</u>
Marine Corps Base, Camp Pendleton	CA20240001	5	4/12/2024	CA/San Diego

(1) Each WD will only be changed, as required, via execution of a contract modification by the Contracting Officer.

(2) Each DoL WD is available electronically and may be found at [www.wdol.gov](http://www.wdol.gov).

(3) If the Contractor is unable to obtain any WD incorporated by reference from the DoL site, the Contractor should request a copy from the Contracting Officer as identified elsewhere in this solicitation or contract.

(4) Note: To accurately retrieve the referenced WD from the DoL site, it is necessary to retrieve the correct revision as identified in the contract.

**I-42 PAYROLL AND BASIC RECORDS (ACNI 0050 SEP 2015)**

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 Construction Wage Rate Requirements statute (previously known as 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 Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Construction Wage Rate Requirements statute, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph a. of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have

been made either directly or indirectly from the full wages earned, other than permissible deductions; and

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

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

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

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

**I-43 APPRENTICES AND TRAINEES (ACNI 0051 NOV 2007)**

a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees. Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended.

**I-44 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (ACNI 0052 NOV 2007)**

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

**I-45 COMPLIANCE WITH CONSTRUCTION WAGE REQUIREMENTS (PREVIOUSLY KNOWN AS DAVIS BACON ACT) AND RELATED REGULATIONS (ACNI 0053 NOV 2007)**

All rulings and interpretations of the Construction Wage Rate Requirements (previously known as Davis-Bacon) and Related Regulations contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

**I-46 CERTIFICATION OF ELIGIBILITY (ACNI 0054 SEP 2015)**

a. By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of 40 U.S.C. 3144(b) (2) or 29 CFR 5.12(a) (1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) (2) or 29 CFR 5.12(a) (1).

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

**I-47 PROHIBITION OF SEGREGATED FACILITIES (ACNI 0055 NOV 2007)**

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

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

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

**I-48 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (ACNI 0056 SEP 2015)**

a. Definitions. As used in this clause-

"Covered area" means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," means the Deputy Assistant Secretary for the Office of Federal Contract Compliance Programs, U.S. Department of Labor, or a designee.

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

"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

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

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

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

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

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

"Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

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

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

d. The Contractor shall implement the affirmative action procedures in paragraphs g.(1) through (16) of this clause. The goals stated in the solicitation for this contract

are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

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

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

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

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

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

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

(1) Actively participates in the group;

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

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

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

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

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

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

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

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

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

n. The Contractor shall designate a responsible official to-

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

(2) Submit reports as may be required by the Government; and



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

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

**I-49 INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (ACNI 0057 NOV 2007)**

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

**I-50 PATENT INDEMNITY-CONSTRUCTION CONTRACTS (ACNI 0058 NOV 2007)**

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

**I-51 ALTERNATIVE PAYMENT PROTECTIONS (ACNI 0061 NOV 2007)**

a. The Contractor shall submit the following payment protections when the contract price meets or exceeds \$30,000: payment and performance bonds.

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

c. The submission of the payment protection is required within ten (10) days of contract award.

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

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

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

**I-52 PERFORMANCE AND PAYMENT BONDS - CONSTRUCTION (ACNI 0062 NOV 2007)**

a. Definitions. As used in this clause-

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

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

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

d. The M CCS requires performance and payment bonds for any construction contract exceeding \$30,000 unless an applicable waiver applies. The Contractor shall furnish to the MR or M CCS a Performance Bond (Standard Form 25) and a Payment Bond (Standard Form 25-A) within 10 days after award of contract before receiving a Notice to Proceed with the work or being allowed to start work. The Bonds shall include a statement that states that "The term United States of America, as set forth in this bond form shall mean the United States Marine Corps, Personal and Family Readiness Division (MR) or Marine Corps Community Services (M CCS) which is a party to this contract." The penal sums of such bonds shall be as follows:

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

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

(3) Additional bond protection.

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

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

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

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

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

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

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

**I-53 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (ACNI 0064 NOV 2007)**

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

b. The MR or M CCS may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as

approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site may also be taken into consideration if--

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

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

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

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

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Name)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Title)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Date)

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

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

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

- (i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or
- (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

e. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the MR

or MCCS and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

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

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

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

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

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

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

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

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

**I-54 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (ACNI 0065 OCT 2023)**

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

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

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

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's

payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

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

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

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

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

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

(i) Name and address of the Contractor.

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

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

(iv) Description of work or services performed.

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

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

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

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

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

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions a.(3)(i) through a.(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or when Federal Government offices are closed (such as in observance of a federal holiday or event) and Government/MR or MCCS business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) A receiving report or other Government/MR or MCCS documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the MR or MCCS and the Contractor.

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

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

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

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

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

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

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

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

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

(6) Additional interest penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision a.(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision a.(6)(iii)(A) of this clause.

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

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

b. Contract financing payments--

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

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

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

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

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

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

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

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

(3) Subcontractor clause flow down. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs c.(1) and c.(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

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

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

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

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

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

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

e. Subcontractor withholding procedures. If a Contractor, after making a request for payment to the MR or MCCS but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a



portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall-

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

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

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

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

(i) Make such payment within-

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

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

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

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

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

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

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

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

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

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

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

e. Third-party deficiency reports-

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

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

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

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

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

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

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

(1) The amount to be withheld;

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

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

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

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

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

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

**I-55 MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER (ACNI 0066 NOV 2007)**

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

b. Exceptions to the EFT are as follows:

(1) Contracts awarded to companies located in OCONUS

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

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

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

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

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

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

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

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

d. Mandatory submission of Contractor's EFT information.

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

(i) Name and address of the Contractor

(ii) Nine-digit Routing Transit Number of the Contractor's financial agent

(iii) Contractor's account number, title of account, and the type of account (checking or savings)

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

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

f. Suspension of payment.

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

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

g. Liability for uncompleted or erroneous transfers.

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

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

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

(i) If the funds are no longer under the control of the payment office, the MR or MCCS is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the MR or MCCS shall not make payment and the provisions of paragraph f. shall apply.

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

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

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

**I-56 DIFFERING SITE CONDITIONS (ACNI 0068 NOV 2007)**

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

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

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

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

**I-57 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (ACNI 0069 NOV 2007)**

a. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work, or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the MR or MCCS, as well as from drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the MR or MCCS.

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

**I-58 MATERIAL AND WORKMANSHIP (ACNI 0070 NOV 2007)**

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

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

**I-59 SUPERINTENDENCE BY THE CONTRACTOR (ACNI 0071 NOV 2007)**

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

**I-60 OTHER CONTRACTS (ACNI 0072 NOV 2007)**

The MR or MCCS or the Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with MR or MCCS and Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by MR or MCCS or Government employees.

**I-61 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (ACNI 0073 NOV 2007)**

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

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

**I-62 OPERATIONS AND STORAGE AREAS (ACNI 0074 NOV 2007)**

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

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

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

**I-63 USE AND POSSESSION PRIOR TO COMPLETION (ACNI 0075 NOV 2007)**

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

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

**I-64 CLEANING UP (ACNI 0076 NOV 2007)**

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

**I-65 AVAILABILITY AND USE OF UTILITY SERVICES (ACNI 0077 NOV 2007)**

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

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

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

**I-66 SCHEDULES FOR CONSTRUCTION CONTRACTS (ACNI 0078 NOV 2007)**

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

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

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

**I-67 LAYOUT OF WORK (ACNI 0079 NOV 2007)**

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

**I-68 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (ACNI 0080 NOV 2007)**

a. The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor

without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

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

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

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

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

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

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

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

**I-69 PRECONSTRUCTION CONFERENCE (ACNI 0081 NOV 2007)**

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

**I-70 BANKRUPTCY (ACNI 0082 NOV 2007)**



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

**I-71 SUSPENSION OF WORK (ACNI 0105 MAR 2020)**

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

b. If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract, or (3) the Contractor's failure to act within a reasonable time if the contract does not specify a time, an adjustment shall be made for any increase in the cost of performance of this contract directly attributable to that unreasonable period of time, and the contract shall be modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. An equitable adjustment is not allowed for profit.

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

**I-72 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (ACNI 0084 NOV 2007)**

a. Definitions. As used in this clause—  
"Commercial item," has the meaning contained in the clause Definitions.  
"Subcontract," includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

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

- (1) Equal Employment Opportunity (E.O.11246);
- (2) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C.4212(a)); and
- (3) Affirmative Action and Nondiscrimination for Workers with Disabilities (29 U.S.C.793).

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

**I-73 WARRANTY OF CONSTRUCTION (ACNI 0086 NOV 2007)**

a. In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph j. of this clause, that work performed under this

contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

b. This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the MR or MCCS takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the MR or MCCS takes possession.

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

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

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

e. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the 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 MR or MCCS shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

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

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the MR or MCCS if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the MR or MCCS, if directed by the Contracting Officer.

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

i. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the MR or MCCS nor for the repair of any damage that results from any defects, gross mistakes, or fraud.

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

**I-74 DEFAULT (FIXED-PRICE CONSTRUCTION) (ACNI 0087 NOV 2007)**

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

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

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

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

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

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

**I-75 PROTEST AFTER AWARD (ACNI 0088 SEP 2015)**

a. Upon receipt of a notice of protest (as defined in MCO 7010.20) or a determination that a protest is likely, the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

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

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

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

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

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

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

f. If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**I-76 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (ACNI 0089 NOV 2007)**

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

**I-77 COMPUTER GENERATED FORMS (ACNI 0090 SEP 2015)**

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

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

**I-78 WALSH-HEALEY PUBLIC CONTRACTS (ACNI 0091 MAY 2021)**

a. If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 6501 et seq.), the following terms and conditions apply:

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

c. All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. Chapter 8), and Secretary of Labor implementing regulations.

**I-79 BUY AMERICAN ACT - CONSTRUCTION MATERIALS (ACNI 0092 NOV 2007)**

a. Definitions. As used in this clause-

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

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

"Cost of components" means-

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

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

(1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

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

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

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

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

b. Domestic preference.

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs b.(2) and b.(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

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

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

c. Request for determination of inapplicability of the Buy American Act.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph b.(3) of this clause shall include adequate information for Government evaluation of the request, including—

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

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

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

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

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON**

Construction Material Description Unit of Measure Quantity Price(Dollars)\*

Item 1:

Foreign construction material \_\_\_\_\_  
 Domestic construction material \_\_\_\_\_

Item 2:

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).]

**I-80 CLAUSES INCORPORATED BY REFERENCE (ACNI 0093 NOV 2007)**

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

**I-81 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (ACNI 0094 NOV 2007)**

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

- \* Prohibition of Segregated Facilities.
- \* Equal Opportunity (E.O.11246).
- \* Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212).
- \* Affirmative Action for Workers with Disabilities (29 U.S.C.793).
- \* Buy American Act—Balance of Payments Program—Supplies (41 U.S.C.10a-d).
- \* Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program.
- \* Alternate I of above.
- \* Alternate II of above.
- \* Trade Agreements Act.
- \* Restriction on Certain Foreign Purchases.
- \* Mandatory Information on Electronic Funds Transfer.

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

- \* Service Contract Labor Standards (previously known as Service Contract Act) (41 U.S.C.351, et seq.).

\* Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C.206 and 41 U.S.C.351, et seq.).

\* Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (29 U.S.C.206 and 41 U.S.C.351, et seq.).

**I-82 VETS-4212 FEDERAL CONTRACTOR REPORTING (ACNI 0099 AUG 2015)**

Contractor shall comply with reporting requirements of 38 U.S.C. 4212(d) for VETS-4212 Federal Contractor Reporting. Refer to <http://www.dol.gov/vets/vets4212.htm>.

**I-83 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (ACNI 0106 SEP 2021)**

a. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

b. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**I-84 EQUAL OPPORTUNITY FOR VETERANS (ACNI 0108 SEP 2021)**

a. Definitions. As used in this clause-- "Veteran" has the meanings given in 38 CFR 3.1.

b. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

c. Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate of identify properly the parties and their undertakings.

**I-85 CONTRACTOR CERTIFICATION OF COMPLAINEE WITH LAW (ACNI 0114 SEP 21)**

The Contractor shall use due diligence to prevent and detect criminal conduct and promote an organizational culture that encourages ethical conduct and compliance with law. By agreeing to this procurement the Contractor certifies that it is complying with all applicable laws to include 10 U.S.C. 431 and 432.

**I.86 TRADE AGREEMENT ACT (ACNI 0110 AUG 2020)**

The Contractor shall comply with the requirements of 19 USC 2501, et seq., 19 USC 2703 (b), and dollar thresholds set forth in 48 CFR § 25.402(b) which are incorporated by reference in this contract/order.

**I.87 COMBATING TRAFFICKING IN PERSONS (ACNI 0116 MAR 2022)**

For administrative convenience of the NAFI, this contract incorporates by reference FAR 52.222-50, Combating Trafficking in Persons. All references to "government" therein shall refer to the NAFI. If this contract is valued over \$500,000, Contractor shall notify the Contracting Officer if supplies, other than commercially available off the shelf items, are acquired outside the United States, or if services provided under this contract are to be performed outside the United States.

**I.88 PROHIBITION ON COVERED TELECOMMUNICATIONS, EQUIPMENT, AND SERVICES (ACNI 0117 JUL 22)**

Clause and Contractor's selections from Section K-6 to be incorporated upon contract award.

**I.89 PROHIBITION ON PROCUREMENT OF CERTAIN ITEMS CONTAINING PERFLUOROOCTANE SULFONATE OR PERFLUOROOCTANOIC ACID (ACNI 0119 APR 2023)**

a. Effective April 1, 2023, in accordance with section 333 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283), the NAFI may not procure any covered items that contain perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA).

b. A covered item means the following:

(1) Nonstick cookware or cooking utensils for use in galleys or dining facilities.

(2) Upholstered furniture, carpets, and rugs that have been treated with stain-resistant coatings.

c. The Contractor shall not provide any covered items containing PFOS or PFOA in performance of this contract, task order, delivery order, or blanket purchase agreement order.

d. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts for any covered item, including subcontracts for commercial products (including commercially available off-the-shelf items) and commercial services.



## SECTION J-ATTACHMENTS

**J-1 SITE APPROVAL** Incorporated by Reference.

Site Approval 23048 NEPA PE20150284RCXR5, WO 11243808, dated February 13, 2023

**J-2 STANDARD INSTALLATION ACCESS (ACNI 0102 JUNE 2021)**

Access to U.S. military installations is a privilege that may be granted, denied, or withdrawn by the installation commander or their authorized representatives. Department of Defense (DoD) Manual 5200.08, Volume 3, Physical Security Program: Access to DoD Installations, establishes DoD policy and guidance on the types of access and minimum requirements for access. Denial or withdrawal may occur as a result of any type of misconduct or incident determined contrary to the best interest of the mission, security of the installation, protection of property, welfare of personnel and/or for any other infraction determined justifiable for denying access.

The Contractor, subcontractor and their employees requiring installation access for the performance of this contract shall comply with installation access control and security requirements when access to the installation is required in performance of contract. Contractor's inability to obtain or maintain installation access and security requirements does not relieve the Contractor of performance requirements. Security requirements are subject to change. It is the Contractor's responsibility to contact the Contracting Officer Representative (COR) prior to attempting access to ensure compliance with current security regulations. For Marine Corps installations that have implemented the Defense Biometric Identification Systems (DBIDS), the following applies:

(1)The Defense Biometric Identification System (DBIDS) is the Marine Corps enterprise-wide installation access control system that is interoperable with other Service access control systems. For Marine Corps installations that have transitioned to DBIDS, Contractor employees or representatives requiring access to the installation must register into DBIDS. Once registered, access tokens (ID's) are scanned at the gates by the base police force using hand held scanners to confirm identity and authorization to access the installation. DBIDS replaces the RAPIDGate system.

(2)Contractors and vendor employees or representatives requiring extended access (greater than 90 days) will be required to register into DBIDS and obtain a DBIDS access token. A criminal history background check for each individual requiring extended access will be included as part of the registration process.

(3)Contractors and vendor employees or representatives requiring short term base access (less than 90 days) will not be issued a DBIDS card, but can expect background checks at the gates prior to being allowed access or may be issued a paper pass from the DBIDS registration sites.

The following processes are required to register:

- (1) Pre-enrollment is conducted online.
- (2) Paper passes issued for routine visits of 90 days or less.
- (3) DBIDS cards issued for periods greater than 90 days.
- (4) All DBIDS Cards will be issued/printed for three years.

c. Base access will expire (in the system) based on contract length and or other factors as determined by the Contracting Officer upon award of the contract.

d. To pre-enroll in DBIDS, [CLICK HERE](#) Once pre-enrolled, Contractor employees or representatives must schedule an appointment with the Provost Marshal Office (PMO).

**SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS**

The Offeror represents and certifies as part of the offer that: (Check or complete all applicable items. Return this section with your proposal.)

**K-1 TYPE OF BUSINESS ORGANIZATION.** The Offeror, by checking the applicable box represents that it operates as \_\_\_\_\_ a corporation incorporated under the laws of the State of \_\_\_\_\_, \_\_\_\_\_ an individual, \_\_\_\_\_ a partnership, \_\_\_\_\_ a nonprofit organization, or \_\_\_\_\_ a joint venture.

**K-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION.** Offeror certifies that this proposal or any changes thereto is made without consultation, communication, or agreement for the purpose of restricting competition or manipulating awards, and this proposal has not been disclosed and will not be disclosed prior to award.

**K-3 CERTIFICATION OF NONSEGREGATED FACILITIES.** (Applicable to solicitations for contracts that are expected to exceed \$10,000 and are covered by the Equal Opportunity Clause.)

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

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

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

**K-4 AFFIRMATIVE ACTION COMPLIANCE.** (Applicable to solicitations for contracts that are expected to exceed \$10,000 and are covered by the Equal Opportunity Clause.) The Offeror represents that (a) it \_\_\_\_\_ has developed and has on file, \_\_\_\_\_ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it \_\_\_\_\_ has \_\_\_\_\_ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**K-5 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS.** (Applicable to solicitations for contracts that are expected to exceed \$10,000 and are covered by the Equal Opportunity clause). The Offeror represents that--

a. It \_\_\_\_\_ has, \_\_\_\_\_ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114.

b. It \_\_\_\_\_ has, \_\_\_\_\_ has not filed all required compliance reports; and

c. Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**K-6 PROHIBITION ON COVERED TELECOMMUNICATIONS, EQUIPMENT, AND SERVICES (ACNI 0117 JUL 2022).**

a. For administrative convenience of the NAFI this contract incorporates by reference 48 CFR section 52.204-25. All references to "government" therein shall refer to the NAFI

b. Contractor shall provide the following certifications in accordance with 48 CFR section 52.204-26 directly to the contracting officer:

The Contractor represents that:

(1) It \_\_\_ does, \_\_\_ does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, that it \_\_\_ does, \_\_\_ does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

c. If Contractor answers "does" to either b(1) or b(2) above, contractor shall complete representations and provide the NAFI information as prescribed in 48 CFR section 52.204-24.

d. Contractor shall provide to the NAFI recertification when requested by the Contracting Officer and when/if there are changes that are applicable to this clause.

**K-7 PROHIBITION ON PROCUREMENT OF CERTAIN ITEMS CONTAINING PERFLUOROOCTANE SULFONATE OR PERFLUOROOCTANOIC ACID - REPRESENTATION (ACNK 0011 APR 2023).**

a. Effective April 1, 2023, in accordance with section 333 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) the NAFI may not procure any covered items that contain perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA). A covered item includes:

(1) Nonstick cookware or cooking utensils for use in galleys or dining facilities; and

(2) Upholstered furniture, carpets, and rugs that have been treated with stain-resistant coatings.

b. Representation. By submission of its offer, the Offeror represents that it is not providing as part of its offer any covered items containing PFOS or PFOA.

**K-8 AUTHORIZATION FOR RELEASE OF INFORMATION.** Enter information, sign, and date.

I authorize all of the listed references to release financial or business data or records to the Marine Corps MCCS activity upon request.

Type or Printed Name & Title of Offeror: \_\_\_\_\_

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

**SECTION L - SOLICITATION INSTRUCTIONS AND CONDITIONS (Nonappropriated Funds)**

**L-1 DEFINITIONS.** As used herein:

a. The term "solicitation" means a request for proposal (RFP) when a procurement is negotiated.

b. The term "offer" means "proposal" when a procurement is negotiated.

**L-2 PREPARATION OF OFFERS**

a. Offerors are expected to examine the entire solicitation package, including drawings, specifications, schedule, instructions, and evaluation factors. Failure to follow all instructions set forth in this solicitation shall result in elimination from award consideration.

b. Each Offeror shall furnish the information required by the solicitation. The Offeror shall sign the offer and print or type its name on the Schedule. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority from a principal of the company making the offer, unless that evidence has been previously furnished to the issuing office.

c. For each item offered, Offerors shall (1) show the unit price/cost for all mandatory items, (2) enter the extended price/cost. The unit price/cost shall be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

d. Offers for supplies or services other than those specified and optional items may not be considered unless authorized by the solicitation.

e. Offerors must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

f. Time, if stated as a number of days, will specify work or calendar days. Work days do not include Saturday, Sunday and holidays; calendar days include all days.

**L-3 EXPLANATION TO PROSPECTIVE OFFERORS.** Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing to the Contracting Officer no later than, **4:00 PM, Pacific Standard Time, April 30, 2024**, (see specific details at paragraph L-18). Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective Offerors.

**L-4 ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS.** Offerors shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer; or (c) by letter, fax, or email. The MCCS must receive the acknowledgment by the time specified for receipt of offers.

**L-5 SUBMISSION OF OFFERS**

a. Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing

the time specified for receipt, the solicitation number, and the name and address of the Offeror.

b. Faxed and emailed offers will be accepted but must arrive before the due date and time. Offers may be faxed to 760-725-6364, Attention: Terisa Hoffman or emailed to [TERISA.HOFFMAN@USMC-MCCS.ORG](mailto:TERISA.HOFFMAN@USMC-MCCS.ORG). Offers may be modified by written, fax, or email notice, if that notice is received by the time specified for receipt of offers.

c. Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to MCCS and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

**L-6. FAILURE TO SUBMIT OFFER.** Recipients of this solicitation not responding with an offer should not return this solicitation, unless specified otherwise. Instead, they should advise the issuing office by letter, fax, or email if they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

**L-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS.** A late proposal is defined as any proposal or amendment that is received at this office after **4:00 P.M. Pacific Standard Time on May 15, 2024**. MCCS reserves the right to consider late proposals or late revisions to proposals when it would be to MCCS advantage to do so; however, late proposals will not be solicited nor encouraged.

(1) Late proposals (including revisions) will be opened to determine if it would be to MCCS's advantage to consider them. A late proposal that results in a tie with the most competitive offer timely received will not be considered.

(2) If a later proposal is received that displaces the most competitive timely proposal received, and it meets MCCS basic needs and offers lower prices or higher fees, it may be considered if it is technically acceptable. If so, all offerors who submitted technically acceptable proposals (including the late one) will be advised that a late proposal was received and is being considered. All offerors will be given the opportunity to revise their proposals via solicitation amendment procedures.

(3) A late proposal or late revision should not be considered if it appears that the integrity of the competitive negotiation process might be jeopardized. Proposals that are substantially late (i.e., 2 days or more) are more likely to jeopardize the integrity of the process.

(4) Late proposals and revisions of proposals not considered will be retained with other unsuccessful proposals.

a. Proposals may be withdrawn by written notice or electronically (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

b. Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a), (b) and (c) above.

c. A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the MR or MCCS after receipt at the Government installation.

d. If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:00 p.m., local time, for the designated Government time.

**L-8 DISCOUNTS FOR PROMPT PAYMENT.** Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discounts will form a part of the award and will be taken if payment is made within the discount period indicated in the offer. As an alternative to offering a prompt payment discount in conjunction with the offer, Offerors awarded contracts may include prompt payment discounts on individual invoices (see ACNI 0064 and ACNI 0065 at Section I).

**L-9 CONTRACT AWARD NEGOTIATED**

a. The MCCS will award a contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation shall be most advantageous to the MCCS, cost or price and non-price factors, specified in Section M-3 of this solicitation, considered.

b. The MCCS may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

c. The MCCS may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Offeror's best terms from a cost or price and technical standpoint.

d. The MCCS shall make an all, or not at all, award determination.

e. A written award or acceptance of offer mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the MCCS may accept an offer whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the MCCS.

f. Financial data submitted with an offer and representations concerning facilities or financing, will not form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost of pricing data, the contract price shall be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

**L-10 LABOR INFORMATION.** General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. Chapter 65), the Contract Work Hours and Safety Standards Act (40 U.S.C. Chapter 37), and the Service Contract Labor Standards (41 U.S.C. Chapter 67) may be obtained from the Department of Labor, Washington, DC 20210, or from an regional office of that agency. Requests for information should include the solicitation number, the name and address of the issuing agency, and a description of the products or services. The Department of Labor website is [www.dol.gov](http://www.dol.gov).

**L-11. INCONSISTENCY IN SOLICITATION.** Any inconsistency in this solicitation shall be resolved by the Contracting Officer designated in the solicitation.

**L-12. SITE VISIT.** Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. This does not; however, include any discussions or questions regarding contractual terms and conditions and changes to the specifications. Refer to paragraph L-19 for Questions. In no event shall failure to inspect the site constitute grounds for a claim after contract award. A site visit has been scheduled for **9:30 AM, Pacific Standard Time (PST), April 26, 2024**, at the Pacific Views Marine Corps Exchange (MCX), Building 2010, aboard Marine Corps Base, Camp Pendleton, California. Directions to this location are provided below:

a. From the South: Take I-5 North to exit 54B for Harbor Dr. toward Camp Pendleton. Merge onto Harbor Dr. and continue onto Vandegrift Blvd. Continue until you approach the military gate where you can check-in. Proceed on Vandegrift Blvd. for approx. 1 mile. Turn right onto Commissary Way and turn left at the intersection. The Pacific Views Exchange will be in front on you. Parking is available.

b. From the North: Take I-5 South to exit 54C for Harbor Dr. toward Vandegrift Blvd/Camp Pendleton. Turn left onto Harbor Dr. and continue onto Vandegrift Blvd. Continue until you approach the military gate where you can check-in. Proceed on Vandegrift Blvd. for approx. 1 mile. Turn right onto Commissary Way and turn left at the intersection. The Pacific Views Exchange will be in front on you. Parking is available.

Please call Mr. Robert Bailey at 760-213-2340, if you get lost.

c. **Base Access.** Due to heightened security, if you do not have a current Defense Biometric Identification System (DBIDS) credential, you must RSVP with the following information for each individual that will be attending the site visit. Please submit all information via e-mail to Ms. Terisa Hoffman at [Terisa.Hoffman@usmc-mccs.org](mailto:Terisa.Hoffman@usmc-mccs.org) no later than **4:00 PM, PST, on April 24, 2024.**

(1) Full Legal Name (as it appears on your government issued identification card)

A valid driver's license, proof of insurance and vehicle registration are required for base access. Please ensure that requirements for base access are met prior to the site visit to avoid delays at the gate and tardiness to the site.

**L-13. TYPE OF CONTRACT.** The MCCS contemplates award of a negotiated firm, fixed price contract resulting from this solicitation.

**L-14. OFFEROR QUALIFICATIONS.** By submission of a response to this solicitation, the offeror certifies that it has sufficient trained personnel to complete the work required within the time frame specified in the contract. In addition to the minimum standards for responsible contractors, the following additional standards shall apply: to the extent that a prospective Contractor proposed to perform the contract by subcontracting, acceptable evidence of his "ability to obtain" experience and pertinent skills shall be a commitment or explicit arrangement which must be in existence prior to being awarded a contract under this solicitation.

**L-15. PREPARATION OF PROPOSALS.** Proposals must be submitted on standard 8-1/2 X 11 paper. Each page must be numbered in sequence. Each section should start on a new page. Standard promotional literature and brochures are acceptable to supplement proposal responses and should be referenced and included in an appendix. Use a table of contents for ease of reference.

**L-16. ALTERNATE PROPOSALS.** Offeror may submit more than one proposal, each of which must satisfy the mandatory requirements of the solicitation in order to be considered.

**L-17. PROPOSAL PACKAGE.** The proposal package must include the specified information and number of copies of the following three parts:

**L-17.1 Technical Proposal - Part One (1 copy).** Each technical proposal shall include a narrative informing:

a. Section One: Corporate Experience. Provide a narrative describing the firm's knowledge, experience, and qualifications in providing services required in this solicitation. Inform number of years in business, special projects performed, annual sales volume (include size in dollars and number of employees), and knowledge of the business.

b. Section Two: Implementation Plan. Describe the proposed methodology and approach to successfully complete all solicitation requirements within the performance period. Specify any assistance that will be required from MCCS.

c. Section Three: Performance Timeline and Mobilization. Provide answers to the following questions: (1) How many work days will be required for you to complete the services as outlined? (2) How many days' notice is required before work will begin on site? (3) What is the lead time for materials to be delivered to the site?

d. Section Four: Warranty. Identify any product and workmanship warranties and terms of service for such warranty.

**L-17.2 Price Proposal - Part Two (1 copy)**

a. The price proposals shall be submitted on a separate piece of paper from the technical proposal.

b. Each price proposal shall include completed, dated, and signed copies of the Solicitation, Offer and Award (Section A), the Price Schedule (Section B), and the Representation and Certifications of Offerors (Section K) with definitions and statements where applicable. All prices shall be stated in United States dollars.

c. On a separate sheet of paper, respond to the following:

(1) Provide a price break-out supporting the Section B firm-fixed price including a fully-burdened price break-out by labor category with respective allocated hours, you may use additional paper if necessary; however, (Section B must be returned).

**L-17.3 Financial Data - Part Three (1 copy).** The offeror shall provide its most recent annual audited financial statements, certified by an independent Certified Public Accounting (CPA) firm, and a copy of the most recent quarterly (or other partial year) financial statement. In the event audited financials are not available, the Offeror shall provide all information deemed relevant to demonstrate the Offeror's financial capability to perform the requirements of the RFP (i.e. income tax return, balance sheet). The offeror shall also provide one (1) bank reference and one (1) vendor reference along with contact information (e.g. name, phone number. (Section K must be returned).

**L-17.4 Past Performance - Part Four (1 copy).** A list that includes names, addresses, points of contact, and telephone, email, and fax numbers of at least four (4) clients for whom your firm has performed similar services within the past two (2) years. Information obtained from references shall be used during evaluation of proposals.



Also list all similar contracts completed within the past three (3) years for government agencies and or DOD NAFIs.

**L-18 WHERE AND WHEN TO SUBMIT PROPOSAL PACKAGE**

**L-18.1** The proposal package shall be enclosed in a sealed envelope or box, properly marked, and mailed or hand-carried to the following address. Faxed and emailed offers will be accepted, but they must be received by the deadline. Other electronic (i.e., telegram) offers will not be considered.

AC/S MCCS  
Attn: Regional Procurement Office- West  
Box 555020, Bldg. 1377  
Marine Corps Base  
Camp Pendleton, CA 92055-5020

Fax: 760-725-6364, Attn: Terisa Hoffman

[TERISA.HOFFMAN@USMC-MCCS.ORG](mailto:TERISA.HOFFMAN@USMC-MCCS.ORG)

**L-18.2** To ensure delivery and safeguarding of contents, submission by registered mail is preferred.

**L-18.3** Proposal packages shall be submitted and/or postmarked in accordance with Section L-7.

**L-18.4** The outside of envelopes MUST be marked in the lower left-hand corner, as follows:

**PROPOSAL - DO NOT OPEN**  
**Solicitation Number PNM24-R-36032**  
**For: Pacific Views MCX Renovation**  
**Closing Date/Time/Zone: May 15, 2024 at 4:00 P.M. (PST)**

**L-19 QUESTIONS**. Questions on this solicitation must be submitted by the Offeror in writing and reference the pertinent solicitation paragraph. Questions will only be accepted through **April 30, 2024, at 4:00 P.M. Pacific Standard Time**, by e-mail to [TERISA.HOFFMAN@USMC-MCCS.ORG](mailto:TERISA.HOFFMAN@USMC-MCCS.ORG) or via facsimile at 760-725-6364. You may confirm MCCS's receipt of your questions by calling Terisa Hoffman at 760-763-9574. MCCS will respond to all questions via facsimile or via certified mail. All questions and responses will be provided to all offerors. The name of your firm will be extracted from questions and responses.

**L-20 INCURRING COST**. MCCS are not liable for any costs incurred by the offerors in submitting offers in response to this solicitation.

**L-21 ACCEPTANCE OF PROPOSALS**. MCCS reserve the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth or referenced in this solicitation, and which demonstrate an understanding of the scope of the project.

**L-22 UNNECESSARILY ELABORATE PROPOSALS**. Unnecessarily elaborate brochures and other presentations beyond that sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor wanted.

**SECTION M - EVALUATION FACTORS FOR AWARD**

**M-1** A contract may be awarded to the responsible offeror submitting conforming and acceptable proposal(s) in accordance with the evaluation criteria, which is in the best interest of M CCS.

**M-2** **EVALUATION**

- a. Unless all offers are rejected, award will be made to the responsible offeror whose offer, conforming to the solicitation, is determined to be the most advantageous to M CCS in accordance with the evaluation criteria.
- b. Responsibility will be determined based on the information submitted in response to Section L-17.3.

**M-3** **EVALUATION FACTORS**. All proposals of responsible offerors received shall be evaluated based on the evaluation factors set forth in sections L-17.1 through L-17.4. All factors will be weighted equally; therefore, the non-price factors to include technical capability, past performance and financial data, when combined, will be weighted heavier than price.