

# GENERAL PROVISIONS

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NAVY EXCHANGE SERVICE COMMAND  
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### **P61 Change number 001 consists of the following:**

- A. Revised Table of Contents.
  
- B. Revised part -- **Section D - Invoice and Payment.**  
Revised pages 21, 22, and 22a through 22f (replacing pages 21 and 22):
  - 1. Invoice and Payment
  - 2. Discounts for Prompt Payment
  - 3. Data Universal Numbering System (DUNS) Number
  - 4. Electronic Funds Transfer
  - 5. Interest (Payable to NEXCOM/NEX)
  - 6. Acceptance of the Government Purchase Card
  - 7. Settlement of Accounts Upon Termination or Expiration
  - 8. Assignments (supersedes and cancels provision A.21 of the same title)

**TABLE OF CONTENTS**  
(Revised per Change No. 001)

<b>Section A - General</b>	<b>07</b>
1. Definitions	07
2. Legal Status	07
3. Order of Precedence	08
4. Contracting Actions Binding on Navy Exchange	08
5. Changes	08
6. Federal, State and Local Taxes	09
7. Indemnity	10
8. Nonwaiver of Defaults	10
9. Compliance with Law	10
10. Examination of Records	11
11. Subcontractors and Outside Associates and Consultants	11
12. Conduct of Contractor Employees on Military Installations	11
13. Standards for Pottery and Related Products	11
14. Item Substitution and Variation in Quantity	12
15. Extras	12
16. Advertisements/Endorsements	12
17. Inspection of Concessions	12
18. In-plant Inspection	12
19. Contractor Inspection Requirements	12
20. Contractor Forms	13
21. Assignments (superseded by provision D.8. - effective 07/01/05)	13
22. Withholding Payments	13
23. Requests for Monetary or other Relief	13
24. Estimates	13
25. Procurement Misconduct	14
26. Environmental Compliance by Concessionaire/Licensee	14
27. Time of the Essence	15
28. Year 2000 Compliance	15
29. Permits and Licenses	16
30. Notice to Contractor of Certain Drug Detection Procedures	16

**TABLE OF CONTENTS**  
(Revised per Change No. 001)

<b>Section B - Packaging, Marking, Transportation, Returns</b>	<b>17</b>
1. Marking Instructions for Overseas Shipments	17
2. Commercial Bills of Lading for F.O.B. Origin Shipments	17
3. Freight Description on Bills of Lading	17
4. Return of Defective or Nonconforming Goods	17
5. Responsibility for Supplies	17
6. Delivery of Excess Quantities	18
<b>Section C - Warranties</b>	<b>19</b>
1. Contractor's Warranty	19
2. Contractor Price Warranty	19
3. Additional Commercial Warranty	19
4. Virus Contamination	20
5. New Material	20
<b>Section D - Invoice and Payment (07/05)</b>	<b>21</b>
1. Invoice and Payment (07/05)	21
2. Discounts for Prompt Payment (07/05)	22
3. Data Universal Numbering System (DUNS) Number (07/05)	22
4. Electronic Funds Transfer (EFT) (07/05)	22b
5. Interest (Payable to NEXCOM/NEX) (07/05)	22d
6. Acceptance of Government Purchase Card (GPC) (07/05)	22d
7. Settlement of Accounts Upon Termination or Expiration (07/05)	22e
8. Assignments (07/05) (This provision supersedes and cancels provision A.21 of the same title.)	22f

**TABLE OF CONTENTS**  
(Revised per Change No. 001)

<b>Section E - Disputes and Termination</b>	<b>23</b>
1. Disputes	23
2. Discontinuance of Operations	24
3. Termination for Convenience	24
4. Termination for Default	24
5. Excusable Default	25
6. Alternative Dispute Resolution	25
7. Protests	25
<b>Section F - Labor-Related Provisions</b>	<b>26</b>
1. Service Contract Act	26
2. Service Contract Act -- Contracts of \$2,500 or Less	26
3. Pre-award On-site Equal Opportunity Compliance Review	26
4. Equal Opportunity	26
5. Affirmative Action for Disabled and Vietnam Era Veterans	26
6. Affirmative Action for Handicapped Workers <sup>27</sup>	26
7. Convict Labor	27
<b>Section G - Clauses Applicable Only to Procurements Placed with Foreign Contractors where delivery or performance is to occur wholly outside the United States, Its Territories and Possessions</b>	<b>28</b>
1. Restrictions on Certain Foreign Purchases	28
2. Taxes	28
3. Assignment of Claims	29
4. Authorization to Perform.	29
5. Labor Relations and Standards.	30
6. Inconsistency Between English Version and Translation of Contract.	30
7. Navy Exchange Privileges for Contractor Personnel Overseas	30

**TABLE OF CONTENTS**  
(Revised per Change No. 001)

<b>Section H - Clauses Applicable to Construction/Conversion and/or Alteration Contracts Only</b>	<b>31</b>
1. Material and Workmanship	31
2. Superintendence by Contractor	31
3. Permits and Responsibilities	31
4. Conditions Affecting the Work	32
5. Contractor Inspection System	32
6. Protection of Existing Vegetation, Structures, Utilities, and Improvements	32
7. Operations and Storage Areas	33
8. Cleaning Up	33
9. Accident Prevention	34
10. Identification of Employees	34
11. Sanitary Conveniences	35
12. Security Requirements	35
13. Station Regulations	35
14. Existing Work	35
15. Requirements for Contractor Vehicle Operation	35
16. Storm Protection	36
17. Securement of Trailers and Portable Buildings	36
18. Utilities for Conversion	36
19. Ability and Use of Utility Services	36
20. Location of Underground Facilities	36
21. Existing Telephone Lines and TV Cables	36
22. Cost Reimbursement	37
23. Construction of Facilities	37
24. Clean Air and Water	38
25. Environmental Protection	39
26. Control and Disposal of Waste; Solid Waste, and Medical and Sanitary Wastes	40
27. Inspections of Construction	41
28. Davis-Bacon and Related Acts	42
29. General Insurance Requirements	50

**NEXCOM GENERAL PROVISIONS**  
**PUBLICATION NUMBER 61**

This publication contains the General Provisions applicable to the nonappropriated fund contracts and purchase orders for supplies and services issued by the Navy Exchange Service Command, Navy Exchange Service Centers, and Navy Exchanges.

These General Provisions are issued, upon request, to vendors doing business with the above activities to eliminate the need for including them with each solicitation, contract or purchase order. They are incorporated by reference into each appropriate contractual document.

These General Provisions are generally not applicable to transactions accomplished by associates specifically authorized to use the Government Purchase Card as follows:

items and materials -- not over \$5,000 per transaction

services (except construction services) -- not over \$2,500 per transaction

construction (per Davis Bacon and Related Acts) not over \$2,000 per transaction

These General Provisions do apply to any transaction made against an appropriate contractual document that incorporates these provisions, in addition to the provisions of such a document.

Periodically, this publication will be modified to keep it up to date. If there are any questions with reference to the clauses, please contact the contracting officer whose name appears on the contractual document.

Revision effective 1 April 1999 -- Applicable to procurement documents, to include Request for Proposals (RFPs), contracts, purchase orders and any other procurement documents, issued after this date, that incorporate or reference this document.

## **Section A - General**

### **1. Definitions**

"Navy Exchange Service Command (NEXCOM)" includes the Navy Exchange Service Centers, Navy Lodges, Ships Stores and, unless stated otherwise, the Navy Exchange System.

- a. "Navy Exchange" means any or all individual Navy Exchange stores and other operational level retail activities of the Navy Exchange System and, unless stated otherwise, the Navy Exchange Service Command and the Navy Exchange Service Centers.
- b. "Contracting Officer" is any person, including buyers, granted authority, in writing, to act on behalf of NEXCOM to execute, administer, modify and terminate, and take other actions relating to a Navy Exchange contract. The term includes, except as otherwise provided in this contract, a person expressly delegated by the contracting officer to represent the contracting officer.
- c. "Contract" means any type of agreement and order for the procurement of supplies, equipment, or services, or for the use/license of government property. A contract encompasses any amendments, modifications, acceptances, awards and notices of award pertaining to such agreement or order; and includes all types and forms of contract, including letter contracts and purchase orders.
- d. "Contractor" includes the terms "vendor," "seller," "concessionaire" and "licensee."
- e. "Government" shall include the Navy Exchange.
- f. "CFR" is the Code of Federal Regulations.
- g. "U.S.C." is the United States Code.
- h. "Day" shall mean, unless otherwise provided, a calendar day, unless the last day of a specified number of days within which the contractor must file a claim or notice with the contracting officer falls on a weekend or federal holiday, in which case the last day shall be the next business day.

### **2. Legal Status**

The Navy Exchange Service Command (NEXCOM) and the Navy Exchange are integral parts of the Department of the Navy and nonappropriated fund instrumentalities of the United States Government. Contracts to which these General Provisions apply are Government contracts; however, they do not obligate any funds of the United States Treasury. Accordingly, procurement statutes and regulations having the force and effect of law, such as the Armed Services Procurement Act, 10 U.S.C. 2301, et seq., and the Federal Acquisition Regulations, 48 CFR 1, et seq., generally do not apply to Navy Exchange contracts. Navy Exchange contracting officers are guided by internal policies and procedures, such as SECNAVINST 7043.5 series.

### **3. Order of Precedence**

In the event of an inconsistency in the solicitation or contract, unless otherwise provided in the solicitation or contract or by law, the inconsistency shall be resolved by giving precedence in the following order:

- a. The Schedule (excluding specifications) [Sections A through G of SS/334 contract form];
- b. Certifications and Representations [Section I] and other instructions [e.g., Instructions and Conditions of the Request for Proposals and Proposal (SS/334)];
- c. Special Contract Clauses [Section H];
- d. These General Provisions;
- e. Other documents, exhibits, and attachments [Section J]; and
- f. Specifications (in case of a conflict between drawings and specifications, the specifications govern).

### **4. Contracting Actions Binding on Navy Exchange**

The Navy Exchange is only bound by the actions of a contracting officer acting within the scope of his or her actual, not apparent, authority. No contract or any amendment or modification thereto shall be binding and enforceable against NEXCOM unless executed in writing by the Contracting Officer.

### **5. Changes**

- a. The Contracting Officer may at any time, by written order, and without prior notice, make changes within the general scope of the contract in any one or more of the following:
  - (1) Drawings, designs, or specifications when the items to be furnished are to be specifically manufactured for NEXCOM, in accordance with the drawings, designs, or specifications;
  - (2) Place and/or time of delivery;
  - (3) Method of shipment or packing.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- c. The contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract. If the contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

- d. Failure to agree to any adjustment shall be a dispute under the Disputes clause herein. However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.
- e. The contractor is required to notify the Contracting Officer in writing within seven (7) days of the occurrence of any event that the contractor considers a change to the contract that has not been authorized in writing signed by the Contracting Officer. The contractor will be deemed to have waived any right to an adjustment if timely notice is not provided to the Contracting Officer as required herein. For purposes of this clause, "event" shall include, but not be limited to, an order or direction by a government official, a contested contract interpretation, interference with or interruption of the contract work, or any other event that increases the cost or time to perform the contract as compared to the cost or time that would be required if the contractor performed the contract in accordance with its terms.

## **6. Federal, State and Local Taxes**

- a. Except as may be otherwise provided in this contract, the prices stated herein include all applicable federal taxes, duties and other charges in effect at the date of this contract and incurred in the performance hereof. The prices stated herein exclude all federal excise taxes with respect to supplies furnished hereunder for exportation to a foreign country or shipment to a possession of the United States.
- b. Unless otherwise stated herein, the prices stated herein do not include the amount of any Federal Retailer's Excise Tax.
- c. Except as may be otherwise provided in the contract, the prices stated herein exclude any state or local sales, use, or other tax. Attached to these General Provisions is a memorandum issued by NEXCOM's legal counsel to assist the Contractor in attempting to obtain exemption from any such excluded tax. The term "state or local sales, use or other tax" includes taxes imposed by a possession of the United States and the Commonwealth of Puerto Rico.
- d. The Contractor assumes complete liability for all taxes applicable to its property, 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 Navy Exchange for any direct or indirect tax imposed on it by reason of this contract or otherwise. Where a state law imposes a sales tax on the sale of the item and/or service by the Contractor to the authorized customer, the sales tax shall be separately stated from the sales price, added to the sales price, and collected from the customer by the Contractor.

## **7. Indemnity**

The Contractor agrees to indemnify and hold harmless the Navy Exchange and any other agency or instrumentality of the United States, and their officers, agents, and employees, from any loss, expense, damage, injury, claim, suit or judgment (including administrative actions taken against the Navy by other federal, state or local agencies) arising from the contractor's (employee's, agent's or subcontractor's) acts or omissions or the items/services provided pursuant to the contract (including any patent, copyright, or trademark infringement claimed by a third party in connection with the items/services provided by the contractor). Nothing contained herein, however, shall relieve or be construed as relieving the Navy Exchange or the United States from any liability growing out of its negligence.

## **8. Nonwaiver of Defaults**

Any failure by the Navy Exchange, at any time or from time to time, to enforce or require strict performance of any terms or conditions of this contract shall not constitute waiver thereof, and shall not affect or impair such terms and conditions or right of the Navy Exchange, at any time, to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

## **9. Compliance with Law**

The contractor agrees to comply with all laws and regulations applicable to Navy Exchange nonappropriated fund contracts. For informational purposes only, the contractor is directed to FAR Subpart 12.5, Title 48, Code of Federal Regulations, which contains a list of laws inapplicable to all government contracts for commercial items/services and commercially available off-the-shelf items. The definitions of "commercial item" and "commercially available off-the-shelf item" set forth at 41 U.S.C. 403 and 41 U.S.C. 431(c), respectively, govern the application of most of these laws. Insofar as any General Provision herein reflects a legal requirement not applicable to a contract awarded by the Navy Exchange, such provision will not apply to the contract.

## **10. Examination of Records**

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

### **11. Subcontractors and Outside Associates and Consultants**

Any subcontractors and outside associates or consultants used by the Contractor to perform the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates or consultants.

### **12. Conduct of Contractor Employees on Military Installations**

The Contractor and its employees or agents shall, while on a military installation, be subject to all applicable laws and regulations now in effect or hereafter promulgated, provided, however, that under no circumstances shall the Contractor or any of its employees or agents be deemed to be employees or agents of the Navy Exchange or the United States (including its agencies and instrumentalities). While on the military installation, the Contractor's employees or agents shall conduct themselves in an orderly and proper manner, and in the event such employees or agents are found to be objectionable, the Contractor agrees that it shall cease to employ such employees or agents upon the military installation.

### **13. Standards for Pottery and Related Products**

The contractor hereby certifies that all pottery, enamelware, pewter, silver plated products, and glassware having painted interiors provided hereunder for the preparation, serving, or storing of food shall comply with at least one of the following standards:

U. S. Food and Drug Administration (FDA) Compliance Policy Guide 7117.07 and FDA Compliance Program Guidance Manual Program 7304.005 Japan Pottery Inspection Association (JPIA) published standards European Economic Community (EEC) Directive 84/500/EEC. Plates, including, but not necessarily limited to commemorative plates, souvenir plates, hand-painted plates, and other highly decorated plates, sold for decorative purposes shall be manufactured with a permanent label on the back of the plate stating, in English, "NOT FOR FOOD USE - ARTICLE MAY POISON FOOD. FOR DECORATIVE PURPOSES ONLY".

Pottery, enamelware, pewter, silver-plated products, and glassware having painted interiors provided hereunder are not required to conform to the FDA, JPIA or EEC standards cited above if they are rendered unsuitable for food use (i.e., by drilling a hole in the bottom of a cup or goblet) or if they are manufactured with a permanently affixed label which cannot be removed or obliterated and is easily seen by the consumer, stating in English, "NOT FOR FOOD USE - ARTICLE MAY POISON FOOD. FOR DECORATIVE PURPOSES ONLY."

#### **14. Item Substitution and Variation in Quantity**

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

#### **15. Extras**

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

#### **16. Advertisements/Endorsements**

The Contractor will not represent in any manner, expressly or by implication, that the supplies or services furnished hereunder are approved or endorsed by the Department of the Navy or any part thereof. Any advertisement, including cents-off coupons by the vendor, which refers to a Navy Exchange will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the Department of the Navy, or any part thereof.

#### **17. Inspection of Concessions**

For concessions or license agreements, the Contracting Officer, or any person designated by the Contracting Officer, may conduct inspections as may be considered necessary to ensure strict compliance by the Concessionaire/Licensee with all provisions of this contract, as applicable. Notwithstanding the Contracting Officer's authority to conduct inspections when necessary, the substance, frequency and time of day of such inspections will be as mutually agreed upon by the Concessionaire/Licensee and the Contracting Officer to ensure uninterrupted service is provided to the customer. In addition, all delivery trucks may be inspected from time to time as deemed necessary by base military police.

#### **18. In-plant Inspection**

The Contractor's plants and the plants of any subcontractors in which work is being performed under this contract shall be open to inspection by the Navy Exchange Service Command or other government personnel at any time during working hours.

#### **19. Contractor Inspection Requirements**

The Contractor shall only tender for acceptance those items that conform to the requirements of the contract. The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturer's parts. The Navy Exchange reserves the right to inspect or test any supplies or services that have been tendered for acceptance.

## **20. Contractor Forms**

Except as otherwise provided in this contract, Navy Exchange forms will be used exclusively for all contracts. Contractor forms or letters will not be accepted or binding on the Navy Exchange.

## **21. Assignments (superseded by provision D.8.)**

The Navy Exchange will not recognize or be bound by an assignment of the contractor's rights to amounts due under this contract. The contractor may request permission from the contracting officer to have contract payments forwarded to a third party.

## **22. Withholding Payments**

- a. The Navy Exchange may offset against payments due the contractor the amount of any obligations owed by the contractor to the exchange, whether or not arising under the contract. For purposes of calculating the payment withheld from the contractor and credited against the debt owed the exchange, the Navy Exchange will retain the benefit of any discounts and allowances, including those that would have been earned, such as prompt pay discounts, but for the offset.
- b. Payments may be withheld if previous payments exceeded the amount due the contractor.
- c. The Navy Exchange is entitled to withhold payments under the circumstances described in the Termination for Default clause or when circumstances give rise to a reasonable suspicion that the contractor has filed a false invoice, request for payment or price adjustment or claim with the Exchange, unless and until such time as these circumstances are resolved to the Exchange's satisfaction.

## **23. Requests for Monetary or other Relief**

Except as provided in the Changes clause, no request for monetary or other relief by the contractor, including a claim filed pursuant to the Disputes clause herein, will be considered unless submitted in writing and received by the contracting officer within 30 days of the events giving rise to the request.

## **24. Estimates**

Estimates provided to the contractor by the Navy Exchange are not guaranteed and, absent bad faith, cannot be the basis for any request for price adjustment or claim.

## **25. Procurement Misconduct**

- a. By submission of an offer, the offeror or contractor certifies with respect to this procurement:
  - (1) that no discussion, offer or promise of future employment or business opportunity has been or will be made to Navy Exchange civilian or military personnel who participated personally and substantially in the procurement;
  - (2) that no offer, promise or gift of any gratuity, entertainment, money or other things of value has been or will be made to any Navy Exchange civilian or military personnel or any other employee of the United States Government or member of their family or household;
  - (3) that no information proprietary to other offerors or other procurement information (listing of offerors, prices offered, technical evaluations or rankings, etc.) has been or will be sought or obtained by or given to any person without authority of the contracting officer before such information would be available to the public under NEXCOM procedures;
  - (4) that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except bona fide employees or bona fide established commercial selling agencies retained by the contractor for the purpose of securing business;
  - (5) that no gratuities (entertainment, gifts, money, kickbacks or other thing of value) were or will be solicited or accepted by the contractor, or any person representing the contractor, from any subcontractor or person representing the subcontractor, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract thereunder.
- b. Contractor will report in writing to the contracting officer any possible violation of this clause when the contractor has reasonable grounds to believe a violation may have occurred. The contractor shall cooperate fully with any federal agency investigation of events or circumstances constituting a possible violation of this clause or similar law or regulation.
- c. NEXCOM may terminate this contract for default and/or recover from the contractor the total value of any contingent fee, gratuity or kickback or other loss suffered by NEXCOM as a result of any breach of this clause.

## **26. Environmental Compliance by Concessionaire/Licensee**

For contracts involving construction and/or operation of a concession on government property:

- a. The Concessionaire/Licensee shall construct/renovate the facilities and/or operate the concession in compliance with all environmental requirements applicable to the site of the concession, including those imposed by local, county, or municipal governments, state or territorial agencies, federal agencies and by the cognizant Navy activity.

- b. The Concessionaire/Licensee shall construct/renovate the facilities and/or operate the concession in compliance with all environmental requirements applicable to the site of the concession, including those imposed by local, county, or municipal governments, state or territorial agencies, federal agencies and by the cognizant Navy activity.
- c. Any changes required to be made by the Concessionaire/Licensee to comply with laws and regulations shall be implemented by the Concessionaire/Licensee at its own expense without any reduction in commissions paid to NEXCOM or compensation paid by the government.
- d. In the event that the Concessionaire's/Licensee's operation is determined not to be in compliance with environmental requirements by either NEXCOM or other officials of the United States Government, or state or local governments, the Concessionaire/Licensee shall take prompt action, at its own expense, to eliminate and/or minimize the violation, or as otherwise directed by NEXCOM of cognizant Navy authority.
- e. If the Concessionaire's/Licensee's operations result in a notice of violation or other citation of environmental noncompliance by a United States, State or local government:
  - (1) The Concessionaire/Licensee shall indemnify and hold the Navy and NEXCOM harmless from and against any and all penalties, fines, fees and other charges and expenses (including, without limitation, cleanup and compliance certification expenses) resulting from the violation;
  - (2) The decision whether to contest, admit or settle any claim or other action relating to any violation shall be made by the cognizant Navy authority;
  - (3) The Concessionaire shall assist the Navy and NEXCOM in determining the facts and responding to and/or defending environmental notices or citations as required and directed, without additional expense to the Navy or reduction in any commissions paid to NEXCOM;
  - (4) Under no circumstances shall the Concessionaire independently discuss, and/or settle, environmental notices or citations with a United States agency or State or local government or any other person without the prior written concurrence of the cognizant Navy authority and NEXCOM.

## **27. Time of the Essence**

Time is of the essence in all Navy Exchange contracts.

## **28. Year 2000 Compliance**

The hardware, software, and/or firmware (including products with imbedded chips) is year 2000 compliant or will be upgraded to be year 2000 compliant prior to December 31, 1999, or if sooner, the earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999 or December 31, 1999. Year 2000 compliant means that the information technology will accurately process date/time data (including but not limited to, calculating, comparing, and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

## **29. Permits and Licenses**

The contractor shall, at his own expense obtain all necessary permits, give all notices, pay all fees and comply with all laws, rules, ordinances and regulations relating to the public health or applicable to the service or business carried on under this contract. The responsibility for determining applicability of licensing requirements, laws, ordinances and regulations for the Contractor and his employees rests solely with the Contractor.

## **30. Notice to Contractor of Certain Drug Detection Procedures**

- a. Pursuant to Navy policy applicable to both Government and Contractor personnel, measures will be taken to prevent the introduction and utilization of illegal drugs and related paraphernalia into or on Government work areas.
- b. In furtherance of the NAVY'S DRUG CONTROL PROGRAM, unannounced periodic inspections of the following nature may be conducted by installation security authorities:
  - (1) Routine inspection of Concessionaire occupied work spaces;
  - (2) Random inspections of vehicles on entry or exit, with drug detection dog teams as available ;
  - (3) Random inspections of personal possessions on entry or exit from the installation.
- c. When there is probable cause to believe that a Contractor employee on board a naval installation has been engaged in use, possession or trafficking of drugs, the installation authorities may detain said employee until the employee can be removed from the installation, or can be released to the local authorities having jurisdiction.
- d. Distribution of illegal drugs and/or drug paraphernalia by contract employees while on a military vessel/installation may lead to possible withdrawal or downgrading of security clearance, and/or referral for prosecution by appropriate law enforcement authorities.
- e. The Contractor is responsible for the conduct of employees performing work under this contract and is, therefore, responsible to assure that employees are notified of these provisions prior to assignment.
- f. The removal of Contractors personnel from a government vessel or installation as a result of the drug offenses shall not be cause for excusable delay, nor shall such action be deemed a basis for an equitable adjustment to price, delivery or other provisions of this contract.

## **Section B - Packaging, Marking, Transportation, Returns**

### **1. Marking Instructions for Overseas Shipments**

The Contractor shall comply with the marking requirements contained in the latest issue of MILSTD-129 for all shipments destined for overseas, including Alaska and Hawaii.

### **2. Commercial Bills of Lading for F.O.B. Origin Shipments**

Prior to releasing any shipments for the Government, the Contractor shall insure that the commercial shipping documents are annotated with the legend:

"Transportation hereunder is for the account of the Navy Exchange Service and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by an instrumentality of the U. S. Government. Tender number \_\_\_\_\_ applies." The carrier and tender number may be obtained by calling the NEXCOM Field Traffic Office (FTO) at 1-800-423-4171.

### **3. Freight Description on Bills of Lading**

"Freight descriptions, as required by the governing freight classification, must be used on bills of lading. Supplies purchased under F.O.B. Origin terms and subject to released value ratings are to be shipped in accordance with instructions obtained from the NEXCOM Field Traffic Office.

### **4. Return of Defective or Nonconforming Goods**

In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, the Navy Exchange shall have the right to reject or, in the case of latent defects or fraud, revoke acceptance of such supplies or services, and to require removal, replacement or correction. When such removal, replacement or correction requires transportation of the supplies or part thereof, all shipping and administrative cost to and from the Contractor's plant shall be borne by the Contractor.

### **5. Responsibility for Supplies**

- a. Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.
- b. Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon -
  - (1) delivery of the supplies to a carrier, if transportation is FOB origin; or
  - (2) delivery of the supplies to the Government at the destination specified in the contract, if transportation is FOB destination.

- c. Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.
- d. Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

#### **6. Delivery of Excess Quantities**

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to \$1000 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$1000 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

## **Section C - Warranties**

### **1. Contractor's Warranty**

The Contractor warrants that:

- a. The items furnished are merchantable and fit and sufficient for use for the particular purpose intended and are not "seconds" as the term is normally understood in the trade. This warranty will survive inspection and/or acceptance of the items.
- b. The items and services will comply with all applicable state and federal laws and regulations, together with all safety, noise emission, or other standards promulgated thereunder or otherwise provided, as well as with all testing, safety certification, record-keeping and labeling requirements.
- c. Notice of any defective or nonconforming item or service shall be given by the Navy Exchange to the Contractor within one year of delivery of items or performance of services. At the Navy Exchange's election, the Contractor shall, whether or not the defect was latent, (1) correct or replace the defective or nonconforming items or services within a reasonable specified time; (2) remove such items and refund the amount of any payment made by the Navy Exchange; or (3) accept an equitable adjustment in the contract price. All expenses required for any correction, replacement or removal shall be borne by the Contractor.

### **2. Contractor Price Warranty**

- a. Most Favored Customer The Contractor certifies that prices, terms and conditions offered under this contract, including consideration of any discount rebate arrangements, do not exceed prices then being charged the Contractor's most favored customer or another military exchange for like items.
- b. Subsequent Reductions If the Contractor subsequently extends voluntary price reductions, promotional offers or other special terms to other customers, the Contractor is obligated to promptly extend them, in writing, to this office.

### **3. Additional Commercial Warranty**

The Contractor agrees that the items or services provided shall be covered by the most favorable commercial warranties extended to its customers for similar items or services. It is further agreed that the rights and remedies provided by this clause are in addition to and do not limit any rights afforded to the Navy Exchange by law or by any other clause of this contract.

#### **4. Virus Contamination**

The contractor warrants that any Automatic Data Processing (ADP) or Information Technology (IT) products provided have been controlled and protected to avoid virus contamination. This warranty will end ninety calendar days after proper product installation unless the Contractor changes (modifies, upgrades or provides approved substitutes) the product, in which case the warrant extends until ninety calendar days from such implementation of such change on Navy Exchange property. In the event there is evidence reasonably tracing a virus contamination to the product provided under this contract, the contractor will be liable for all costs and expenses incurred in removing the virus and correcting or replacing damaged ADP/IT products.

#### **5. New Material**

Unless this contract specifies otherwise, the Contractor warrants that the supplies and components, including any former government property identified under used or reconditioned material, residual inventory, and former government surplus clause of this contract are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Contractor shall so notify the Contracting Officer in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any considerations to Government if the Contracting Officer authorizes the use of used or reconditioned supplies or components.

## **Section D - Invoice and Payment Section D - Invoice and Payment**

### **1. Invoice and Payment**

- a. An invoice is a written request for payment under the contract for items delivered or for services rendered. In order to be proper, an invoice must include, as applicable, the following:
  - (1) Contractor/Vendor invoice number and date;
  - (2) Contractor/Vendor name and when required, Taxpayer Identification Number (TIN);
  - (3) Contract and/or purchase order (PO) and/or delivery order (DO) and/or task order (TO) number, and contract date;
  - (4) Navy Exchange Service Command (NEXCOM)/Navy Exchange (NEX)/Navy Exchange System (NES) department number and/or account number, and/or any other identifying number required by the contract;
  - (5) Line item number and description of items or services; quantity; unit of measure, unit price, and extended total; payment terms; trade discount and allowances (all trade discounts and allowances must be shown as both a percentage figure and a numerical total, the latter of which must be deducted from the invoice total);
  - (6) Shipment number and date of shipment (bill of lading number and weight of shipment will be shown for shipments on Government bill of lading);
  - (7) Proof of shipment on prepaid invoices for items destined to overseas locations;
  - (8) Correct "remit to" name and address, to which payment is to be sent (which must be the same as in the contract or on a proper notice of assignment);
  - (9) Name (where practicable), title, phone number and mailing address of person to be notified in event of defective invoice;
  - (10) Any other information or documentation required by other provisions of the contract (such as evidence of shipment).
- b. One invoice shall be prepared and submitted for all NEXs unless otherwise specified.

- c. Invoices will be handled and payments made in accordance with the Prompt Payment Act (PPA), 31 U.S.C. 3903 and 5 CFR 1315. Payment terms offered by the contractor are not considered to be required payment dates; however, NEXCOM/NEX may avail itself, to any prompt pay discounts, distribution allowances, or other special discounts or allowances offered by the contractor.
- d. Chargebacks (CBs) are considered final and non reviewable unless NEXCOM/NEX receives a written notice of dispute from the contractor within 12 months from the date of the CB. Chargeback (CB) means the amount NEXCOM has determined is owed to the NES by the contractor/vendor. The paper copy of the CB briefly explains why the CB was applied (for example, due to return of merchandise for repair, replacement, or credit; errors in filling and/or shipping an order; invoice overcharge, etc.; as well as any applicable handling fees incurred as a result). CBs are automatically deducted from any pending contractor/vendor payment.
- e. Invoices submitted more than 12 months after delivery of goods and services will not be considered for payment.

## **2. Discounts for Prompt Payment.**

In connection with any prompt payment discount offered, time will be computed from date of delivery of the items to carrier when acceptance is at the point of origin, or from date of delivery and acceptance at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government if the latter is later than date of delivery. Payment is deemed to be made, for the purpose of earning the discount, on the date the check is mailed.

## **3. Data Universal Numbering System (DUNS) Number**

- a. NEXCOM/NEX requires that all contractors obtain at least one Data Universal Numbering System (DUNS) number.
- b. The "DUNS" is a nine-digit number assigned by "Dun and Bradstreet Information Services" (D&B) that identifies the contractor by name and remittance address(es). The NEXCOM/NEX accounts payable system requires a DUNS number to remit funds.
- c. DUNS numbers must be obtained directly from D&B, and will be provided at no charge. Companies within the U. S. may call D&B toll free at 1-800-333-0505 (option #3), or contact D&B via the internet at <www.dnbcorp.com> (select "D&B D-U-N-S Number"), to obtain DUNS numbers. Note: D&B will require the following data to issue a DUNS number:

- (1) Company affiliation (relationship to other businesses that may be linked in the D&B data base to the company).
  - (2) Contractor name, address, and telephone number;
  - (3) Line of business;
  - (4) Chief Executive Officer/Key Manager;
  - (5) Date the company was started and number of people employed by the company; and
- d. Companies located outside the U. S. may obtain the location and phone number of the local D&B office from the D&B internet home page at <<http://www.customerservice@dnb.com>>.
- If a local service center cannot be located, e-mail D&B at <[globalinfo@mail.dnb.com](mailto:globalinfo@mail.dnb.com)>.
- e. Note: DUNS numbers will not be assigned for the following:
- (1) Different departments at the same location (for example, accounting and personnel departments);
  - (2) Unstaffed operations of locations (for example, automatic tellers);
  - (3) Trade styles or additional names used for buying and/or advertising purposes; and,
  - (4) Post Office Boxes used only for general mailing purposes.
- f. DUNS numbers are retained under the following circumstances:
- (1) If a business moves to a new location, the DUNS number remains the same;
  - (2) If a business stops operations without a successor, its DUNS number is retired and will not be reissued or used again, unless the business reopens;
  - (3) If a company consolidates operations or locations, the DUNS number of one of the locations is retained for the consolidated location; and,
  - (4) If one or more corporations merge into an existing corporation, the DUNS number of the latter corporation is retained.

#### 4. Electronic Funds Transfer

- a. In accordance with Department of Defense (DoD) policy, all payments to contractors will be made by Electronic Funds Transfer (EFT). As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer. In the event payment cannot be remitted by EFT, payment will be remitted by check or some other mutually agreeable method of payment.
- b. Contractors are required and shall provide NEXCOM/NEX the information necessary to make payment by EFT. In the event EFT information changes, the contractor shall be responsible for providing updated information.
- c. EFT payments are presently remitted through the Automated Clearing House (ACH) Network, subject to the rules of the National Automated Clearing House Association (NACHA). The following electronic payment data is required to make EFT payments:
  - (1) Contractor's name, address, and DUNS Number;
  - (2) Contractor's receiving financial agent (bank) data:
    - (a) Receiving bank name and address;
    - (b) Account number (at receiving bank);
    - (c) Receiving bank's routing number (ABA #) or SWIFT code (if applicable); and,
    - (d) Type of bank account (checking, saving, or lock-box) at receiving bank;
  - (3) Contractor personnel authorized to issue changes to EFT data:
    - (a) Name, title and signature; and,
    - (b) Phone number/extension, facsimile (FAX) number, and electronic mail (e-mail) address for each authorized manager.
- d. If the contractor's bank is unable to provide remittance, the contractor may select one of the following methods to receive remittance:
  - (1) Electronic Data Interchange (EDI) [V]: provided appropriate qualifier, sender/receiver identification (ID),
  - (2) Value Added Network (VAN), IBM account, and user ID are furnished; FAX [F]: provided an appropriate FAX number, contact name, and contact phone number are furnished;

(3) E-mail [E]: provided an appropriate e-mail address, contact name, and contact phone number are furnished.

Note: NEXCOM/NEX 820 specifications are available at <www.navy-nex.com>.

Qualifier -- 08; Sender/Receiver ID -- 9252671859; VAN -- QRS;

IBM Global Acct -- R0654; User ID -- R0654ED.

- e. NEXCOM/NEX is not required to make any payment until receipt of the correct EFT payment information from the contractor. Until receipt of the correct EFT information, any invoice received will be deemed not proper for the purpose of prompt payment.
- f. If an incomplete or erroneous transfer occurs because NEXCOM/NEX used the contractor's EFT information incorrectly, NEXCOM/NEX remains responsible for making a correct payment, paying any prompt payment penalty due, and recovering any erroneously directed funds. If an incomplete or erroneous transfer occurs because the contractor's EFT information was incorrect, and the funds are no longer under NEXCOM/NEX control, NEXCOM/NEX will be deemed as having made payment and the contractor shall be responsible for recovery of any erroneously directed funds.
- g. 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 EFT payment transaction was released on or before the prompt payment due date, provided the specified payment date is a valid date.
- h. If the contractor assigns the proceeds of this contract, the contractor shall require, as a condition of any such assignment, that the assignee shall provide the EFT information required herein. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims acceptable to the NEXCOM/NEX, is incorrect EFT information within the meaning of this provision.
- i. NEXCOM/NEX is not liable for errors resulting from changes to EFT information provided by the contractor's financial agent.

## **5. Interest (Payable to NEXCOM/NEX)**

- a. Notwithstanding any other clause of this contract, all amounts that become payable by the contractor to NEXCOM/NEX, shall bear simple interest from the date due until paid, unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act (CDA) of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph b. of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary of the Treasury until the amount is paid.
- b. Amounts shall be due at the earliest of the following dates:
  - (1) The date fixed under this contract;
  - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination;
  - (3) The date the Government transmits to the contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt; or,
  - (4) If this contract provides for revision of prices, the date of written notice to the contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

## **6. Acceptance of the Government Purchase Card**

- a. When required by the Contracting Officer, the contractor shall permit delivery orders to be placed (oral or written) via the Government Purchase Card (GPC) and shall accept the GPC as a payment vehicle for deliveries against this contract. There shall be no additional charge to NEXCOM /NEX for utilizing the GPC.
- b. All delivery/task orders (oral or written) placed against this contract, including those placed using GPC, are subject to all terms and conditions of this contract. The contract shall take precedence over any instructions or conditions provided at the time a GPC order is placed, and in the event of any inconsistencies between the two, the contractor shall suspend performance and request direction from the Contracting Officer for this contract.
- c. With each order, the contractor shall furnish to the ordering activity a detailed receipt or packing slip that identifies by Contract Line Item Number (CLIN) item(s) and/or service(s) ordered, the contract number, the CLIN cost price, and any applicable terms and conditions, for example, freight terms (F.O.B. origin or destination).

- d. Orders placed via GPC are not to exceed \$5,000 for item(s), \$2,500 for service(s), or \$2,000 for "construction" with the following exceptions:
  - (1) Contracting Officers, within the limit of their authority, may place individual GPC delivery orders (for items and services only) against this contract, for up to \$100,000, if agreed to in advance by both parties, in writing;
  - (2) Contracting Officers may require that each GPC delivery order be confirmed in writing before items are shipped or services are rendered; and
  - (3) The total dollar value of all delivery orders placed against this contract shall not exceed the value of this contract, unless a Contracting Officer has issued a written, signed contract modification increasing the contract value.
- e. Except for these specific procedures for placement of delivery orders using the GPC, this provision is not intended to alter any aspect of any General Services Administration (GSA) GPC Contract.

#### **7. Settlement of Accounts Upon Termination or Expiration**

- a. Upon termination or expiration of the contract, the contractor shall promptly settle its accounts with NEXCOM/NEX, including payment in full of all commissions, fees, CBs, or other sums due NEXCOM/NEX, and yield up the premises to the Government, including any furnished equipment, furniture, and fixtures, all in good condition and working order (ordinary wear and tear excepted). The contractor shall surrender all installation passes for itself and its employees and agents, and complete satisfactory settlement of all customer claims.
- b. Upon termination or expiration of the contract, the contractor shall promptly remove all contractor-owned property and items from the installation. Upon failure to do so, the Contracting Officer is authorized to cause the contractor's property to be removed and stored in a public warehouse at the contractor's expense. If the contractor is indebted to the Government, the contractor authorizes and empowers the Contracting Officer to take possession of the contractor's property and dispose of same by public or private sale, without notice, and to satisfy, out of the proceeds of the sale, the cost of that sale and the contractor's indebtedness to the Government.

## **8. Assignments**

**(This provision supersedes and cancels provision A.21. of the same title.)**

- a. NEXCOM will not recognize or be bound by an assignment of the contractor's rights to amounts due under this contract unless the assignment has been reviewed, accepted, and signed by an authorized NEXCOM representative.
- b. The contractor may request permission from the contracting officer, in writing or by way of assignment and with 30-days notice, to have contract payments forwarded to a third party.
- c. If using a factor, vendor is limited to one factor at a time. The effective date of the change in remit-to address should coincide with an invoice date.
- d. NEXCOM will deduct charge-backs from outstanding invoices, regardless of any change(s) in remit-to address. Vendor remains responsible for refunding any outstanding Chargebacks to NEXCOM.

## **Section E - Disputes and Termination**

### **1. Disputes**

- a. This contract is subject to the Contracts Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).
- b. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- c. "Claim", as used in this clause, means a written demand or a written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a certain sum, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (e)(2) below. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- d. A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- e. For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a certification that:
  - (1) The claim is made in good faith;
  - (2) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and
  - (3) The person submitting the claim is duly authorized to certify the claim on behalf of the Contractor;
  - (4) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- f. For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor- certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- g. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

- h. The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- i. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

## **2. Discontinuance of Operations**

This contract will be automatically terminated without cost or liability to either party in the event of the closure of the military installation, unless the Navy Exchange continues the operations or services provided under this contract. In all other instances, the provisions covering termination as set forth herein shall apply.

## **3. Termination for Convenience**

The Contracting Officer, by written notice, may terminate this contract in whole or in part, when it is in the best interest of the Government. In the event of such termination, the Contractor shall immediately stop work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of the contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the items delivered or work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor is not entitled to anticipatory profits and shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

## **4. Termination for Default**

In addition to any other rights it may have, at common law or otherwise, the Navy Exchange may immediately terminate this contract, or any part hereof, for cause in the event of any default by the Contractor or in the event of a failure to comply with any contract terms and conditions, or, upon demand, to cure a failure to make progress consistent with the terms of the contract or provide adequate assurances of future performance. In the event of termination for cause, the Navy Exchange shall not be liable to the Contractor in any amount for supplies or services not accepted, and the Contractor shall be liable to the Navy Exchange for any and all rights and remedies provided by law. If it is determined that the Navy Exchange improperly terminated this contract for cause, such termination shall be deemed a termination for convenience.

## **5. Excusable Default**

The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The contractor shall notify the contracting officer as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the contracting officer of the cessation of such occurrence.

## **6. Alternative Dispute Resolution**

The parties, by mutual consent, may agree to use Alternative Dispute Resolution (ADR). When using arbitration conducted pursuant to 5 U.S.C. 575-800, or any other ADR technique in accordance with the Administrative Dispute Resolution Act (Pub. L. 101-522, as amended), the claim, regardless of amount, shall be accompanied by the certification described in the above Disputes clause.

## **7. Protests**

In the event a third-party protest is received by the contracting officer after contract award, the Navy Exchange's right to suspend or terminate the contract and the contractor's right to participate in the protest process are governed by NEXCOM's protest procedures, a copy of which is available upon request.

## **Section F - Labor-Related Provisions**

### **1. Service Contract Act**

The contract clause set forth at 29 CFR § 4.6 is incorporated by reference in all contracts exceeding \$2,500, if the principal purpose of the contract is to furnish services through the use of service employees. Unless otherwise provided, service contracts that are indefinite in amount are deemed to exceed \$2,500.

### **2. Service Contract Act -- Contracts of \$2,500 or Less**

Except to the extent that an exemption, variation, or tolerance would apply if this contract were in excess of \$2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

### **3. Pre-award On-site Equal Opportunity Compliance Review**

An award in the amount of \$10 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$10 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the equal opportunity clause of these General Provisions.

### **4. Equal Opportunity**

If the Contract and any subcontract exceeds \$10,000 (unless otherwise stated, an indefinite amount will be deemed to exceed \$10,000) or the Contractor and any subcontractor has contracts or subcontracts with the Government in any 12-month period the expected aggregate total value of which exceeds \$10,000, and the Contract is not otherwise exempt, the Contractor and subcontractors must comply with Executive Order 11246, regulations of the Department of Labor, and the applicable clause set forth at 41 CFR § 60-1.4, which is incorporated herein by reference.

### **5. Affirmative Action for Disabled and Vietnam Era Veterans**

If the Contract and any subcontract equals or exceeds \$10,000 (unless otherwise stated, an indefinite amount will be deemed to exceed \$10,000), and it is not otherwise exempt, the Contractor and subcontractor must comply with regulations of the Department of Labor and the Office of Federal Contract Compliance Programs, and the affirmative action clause set forth at 41 CFR § 60-250.4, which is incorporated herein by reference.

## **6. Affirmative Action for Handicapped Workers**

If the Contract exceeds \$2,500 and is not otherwise exempt, the Contractor will comply with the regulations of the Department of Labor and the affirmative action clause set forth in 41 CFR § 60-741, which is incorporated herein by reference.

## **7. Convict Labor**

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

**Section G - Clauses Applicable Only to Procurements Placed with Foreign Contractors where delivery or performance is to occur wholly outside the United States, Its Territories and Possessions**

**1. Restrictions on Certain Foreign Purchases**

- a. "Parastatal organization", as used in this clause, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity which previously received start up assistance from the South African Industrial Development Corporation but which is now privately owned and which is not owned, controlled, or subsidized by the Government of south Africa.
- b. Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not require for use in the performance of this contract:
  - (1) Any supplies or services originating from sources within the communists areas of North Korea, Vietnam, Cambodia, or Cuba;
  - (2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba;
  - (3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles; or
  - (4) Supplies or services from the South African Government or parastatal organizations of South Africa.
- c. The Contractor shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.
- d. The Contractor agrees to insert the provisions of this clause, including this paragraph (d) in all subcontracts hereunder.

**2. Taxes**

When Section H applies, the clause entitled "Federal, State and Local Taxes" located elsewhere herein, is superseded by the following clause:

- a. The contract price, including the prices in any subcontracts hereunder, does not include any tax, duty or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the United States, or on its behalf; or any tax, duty, or other public charge from which the Contractor any subcontractor hereunder, is exempt by law, regulation or otherwise.

- b. If any such tax, duty or other public charge has been included in the contract price, through error or charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced. If, for any reason after the contract date of execution, the Contractor or subcontractor is relieved, in whole or in part, from the payment of the burden of any tax, duty or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay, in whole or in part, any tax duty or other public charge which was not included in the contract price or other public charge which was not included in the contract price and which was not applicable at the contract date of execution, the contract price shall be correspondingly increased.

### **3. Assignment of Claims.**

- a. No claims for monies due or to become due shall be assigned by the Contractor unless (i) approved in writing by the Contracting Officer; (ii) made in accordance with the laws and regulations of the United States of America; and (iii) permitted by the laws and regulations of the Contractor's country.
- b. In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.
- c. Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies and for which direct payment thereof is to be made to an assignee, the Contractor shall identify the assignee by name and complete address and shall acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

### **4. Authorization to Perform.**

The Contractor warrants that he has been duly authorized to operate and do business in the country or countries in which this contract is to be performed; that he has obtained, at no cost to the United States Government, all necessary licenses and permits required in connection with the contract; and that he will fully comply with all the laws, decrees, labor standards and regulations of such country or countries during the performance of this contract.

## **5. Labor Relations and Standards.**

It is agreed between the parties that in the performance of this contract the Contractor shall be responsible for complying with any and all laws which may from time to time be in effect governing the hours, wages, labor relations (including collective bargaining), workmen's compensation, working conditions and other matters pertaining to labor standards of the country, or political matters pertaining to labor standards of the country, or political subdivision thereof, wherein this contract is to be performed.

## **6. Inconsistency Between English Version and Translation of Contract.**

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

## **7. Navy Exchange Privileges for Contractor Personnel Overseas**

Contractor personnel at overseas locations are authorized Navy Exchange shopping privileges subject to the following conditions:

- a. The local area commander, where applicable, the base commanding officer and the officer in charge of the exchange, must authorize such privileges.
- b. These privileges include shopping for retail merchandise and services, except for the purchase of articles of uniform, tobacco products and alcoholic beverages.
- c. Contractor personnel must be United States citizens, living or posted overseas and must be assigned to work exclusively on Navy exchange system contracts for a period of thirty consecutive days or more, to qualify for exchange privileges.

## **Section H - Clauses Applicable to Construction/Conversion and/or Alteration Contracts Only**

### **1. Material and Workmanship**

- a. Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may at his/her option, use any equipment, material, article, or process which, in the judgment of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his/her approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work when required by the Contracting Officer. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.
- b. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

### **2. Superintendence by Contractor**

The Contractor, at all times during performance and until the work is completed and accepted, shall give his/her personal superintendence to the work or have on the work site a competent superintendent, satisfactory to the Contracting Officer and with authority to act for the Contractor.

### **3. Permits and Responsibilities**

- a. The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and complying with any applicable federal, state, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He/She shall be similarly responsible for all damages to persons or property that occur as a result of his/her fault or negligence. He/She shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He/She shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which thereto fore may have been accepted.

- b. The requirement in (a) above shall specifically include the responsibility of the Contractor to obtain those licenses and permits required for actions associated with construction work, including transport and handling of hazardous materials and wastes, the direct or indirect discharge of gaseous or liquid emissions into the environment, and temporary or permanent placements of solid waste materials. Also, without limiting the general requirement for compliance with all federal, state and municipal laws, codes and regulations shall specifically include such laws, codes and regulations governing work structures that may affect existing environmental conditions.
- c. During the performance of work under this contract, the Contractor shall notify the Contracting Officer not less than sixty (60) calendar days in advance of any and all work in wetlands or deposits that may reasonably be expected to enter wetlands or navigable waters.
- d. The Government will be responsible for obtaining those environmental and other construction permits whose issuance is directly dependent upon the design and function of the proposed facility, or action, i.e. U. S. Army Corps of Engineers and state permit for dredge or fill and construction in navigable waters and wetlands; state environmental regulatory agency permit for installation of an air emission source, wastewater, solid waste and similar facilities and Coast Guard and Federal Aviation Administration permits. In such cases, the Contractor shall be relieved of responsibility under (a) and (b) above for obtaining these specific licenses or permits.

#### **4. Conditions Affecting the Work**

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him/her from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

#### **5. Contractor Inspection System**

The Contractor shall (1) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (2) maintain and make available to the Government adequate records as such inspection.

#### **6. Protection of Existing Vegetation, Structures, Utilities, and Improvements**

- a. The Contractor will 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 construction work required under this contract. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

- b. The Contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities, resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor.

## **7. Operations and Storage Areas**

- a. The Contractor shall confine all operations (including storage of materials) upon government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- b. Temporary buildings (storage sheds, shops, offices, etc.) 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 Government. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon the completion of the work. With the written consent of the Contracting Officer, such 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 construct and use such temporary roadways as may be 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 against damage. Any damaged roads, curbing, or sidewalks shall be repaired at the expense of the Contractor.

## **8. Cleaning Up**

The Contractor shall at all times keep the construction area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work area and premises any rubbish, and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the construction, the Contractor shall leave the work area in a clean, neat and workmanlike condition satisfactory to the Contracting Officer. The job site and lay down, storage and work areas shall be maintained in a neat, orderly condition on a continuing basis and shall comply with the standards of cleanliness and appearance regulating the station. The continued availability of all lay down, storage and work areas to the Contractor will be at the convenience of the Government and subject to strict compliance with station cleanliness and appearance standards.

## **9. Accident Prevention**

- a. The Contractor shall provide and maintain work environments and procedures which will safeguard the public and government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; avoid interruptions of government operations and delays in project completion dates; and, control costs in the performance of this contract. For these purposes, the Contractor shall:
  - (1) Provide appropriate safety barricades, signs, and signal lights while performing work which includes construction or renovation;
  - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and
  - (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.
- b. The Contractor shall comply with all pertinent provisions of the latest version of U. S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- c. Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- d. The Contractor shall insert this clause, including this paragraph (d), with appropriate changes in the designation of the parties, in subcontracts.

## **10. Identification of Employees**

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

## **11. Sanitary Conveniences**

Adequate sanitary conveniences of any approved type for the use of persons employed on the work, and properly secluded from public observation, shall be constructed and maintained by the Contractor in such a manner and at such points as shall be required or approved by the Contracting Officer.

These conveniences shall be maintained at all times without nuisance and their use shall be strictly enforced. Upon completion of the work they shall be removed from the premises, leaving the premises clean and free from nuisance.

## **12. Security Requirements**

No employee or representatives of the Contractor will be admitted to the site of the work unless he furnishes satisfactory proof that he is a citizen of the United States or a lawfully admitted resident of the United States.

## **13. Station Regulations**

The Contractor and his/her employees and subcontractors shall become familiar with and obey all station regulations including fire, traffic, and security regulations. All personnel employed on the station shall keep within the limits of the work (and avenues of ingress and egress), and shall not enter any restricted areas unless required to do so and are cleared for such entry. The Contractor's equipment shall be conspicuously marked for identification.

## **14. Existing Work**

The disassembling, disconnecting, cutting, removal or altering in any way of existing work shall be carried on in such a manner as to prevent injury or damage to all portions of existing work, whether they are to remain in place, be reused in the new work, or be salvaged and stored. All portions of existing work which have been cut, damaged or altered in any way during construction operations shall be repaired or replaced in kind and in an approved manner to match existing or adjoining work. All work of this nature shall be performed by the Contractor at his/her expense and shall be as directed. Existing work shall, at the completion of all operations, be left in a condition as good as existed before the new work started.

## **15. Requirements for Contractor Vehicle Operation**

- a. The Contractor shall ensure that all contract personnel who operate government furnished equipment (GFE) and contractor furnished equipment (CFE) are licensed in accordance with state or local requirements, as applicable, where such licenses are normally issued or required.
- b. All Contractor personnel operating or riding in a government furnished vehicle or a contractor furnished vehicle required to be equipped with seat belt assemblies shall wear the seat belts whenever the vehicle is in motion while on the military installation.

## **16. Storm Protection**

Should wind warnings of gale force or stronger be issued, the Contractor shall take every practicable precaution to minimize danger to persons, to the work, and to adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and equipment from exposed locations, and removing or securing scaffolding and other temporary work.

## **17. Securement of Trailers and Portable Buildings**

All Contractor's on-site trailers and portable buildings shall be secured by tie-downs in a suitable manner as approved by the Contracting Officer, to insure their stability in storms and high winds prevalent in the particular geographical area, until removed from the work site.

## **18. Utilities for Conversion**

The Contractor shall be responsible for obtaining, either from available government sources or local utility companies, all utilities required for construction and paid for at the current utility rate delivered to the job site. The Contractor shall provide and maintain all temporary utility connections and distribution lines, and all meters required to measure the amount of each utility used.

## **19. Ability and Use of Utility Services**

- a. The Government will make available to the Contractor, from existing outlets and supplies, all reasonably required amounts of utilities. Each utility shall be charged to or paid for by the Contractor at private rates charged to the Government or, where the utility is produced by the Government, at rates as determined by the base comptroller.
- b. Should the Government elect to provide temporary utilities at no charge to the Contractor, the Contractor shall carefully conserve such utilities, at his/her own expense and in a workmanlike manner satisfactory to the Contracting Officer. The Contractor shall install and maintain all necessary temporary connections and distribution lines including meters to measure the amount of each utility used. Contractor shall remove the same prior to final acceptance of the renovation.

## **20. Location of Underground Facilities**

Where existing piping, utilities, and underground obstructions of any type are indicated in locations to be traversed by new piping, ducts, and other work provided herein, and are not indicated or specified to be removed, the elevations of the existing utilities and obstructions shall be determined before the new work is laid closer than the nearest manhole or other structure at which an adjustment in grade could be made.

## **21. Existing Telephone Lines and TV Cables**

Upon proper notification, local telephone and telephone cable companies will identify and, if necessary, relocate these services to prevent their damage. Prior to beginning renovation, the Contractor shall properly notify these companies and make all such arrangements.

## **22. Cost Reimbursement**

- a. In the event of termination of this contract and any extension thereof in whole or part at the convenience of the Government, the Navy Exchange will pay the Contractor for the undepreciated value of improvements. This payment shall reflect the lower of undepreciated value arising from (a) ten (10) year straight line depreciation, or (b) accelerated tax depreciation under the IRS guidelines utilized by the Contractor in each of the contract years prior to the termination.
- b. Should this contract be terminated for default (failure to perform) or terminated by the Contractor, in whole or in part, no payment for Contractor improvements will be effected, and the title for all improvements shall automatically pass to the Government.
- c. Upon expiration of this contract should the Government elect to take title to the improvements installed by the Contractor, all such improvements shall pass to the Government for a total sum of \$1.00.
- d. In the event that title passes to the Government under (a), (b), or (c) above, the exchange reserves the right to reuse the improvements as it sees fit, including the right to offer them to a new contractor.
- e. In those instances where improvement costs are to be reimbursed to the Contractor, all costs shall be itemized and certified, and will be subject to audit by the Government.

## **23. Construction of Facilities**

- a. The Contractor shall be responsible for all costs of design and construction of the site(s), and the equipment required to provide complete and functional facilities. After award, the Contractor shall have 30 days to furnish the installation public works officer, or other designated engineer, two complete sets of plans and specifications for the facilities to be constructed. Upon acceptance, the Contracting Officer will issue a written notice to proceed to the Contractor. The Contractor may not commence construction prior to issuance of the notice to proceed.
- b. The facility design shall be suitable for permanent type military facilities and compatible with the fire protection requirements for noncombustible construction and satisfy local, military and governmental codes and industrial standards and regulations. The Contractor shall accomplish necessary investigations, soil boring, etc., as required to support the design analysis and forward a copy of the results to the Contracting Officer. The Contractor shall comply with all Navy health, sanitation and safety regulations including Occupational Safety and Health Agency (OSHA), Environmental Protection Agency (EPA) regulation, as well as all applicable federal, state, and local requirements.

- c. The Contractor shall provide all work necessary to construct each facility including inspection services. Tests of materials shall be made when required by regulations. Tests shall be accomplished by an independent testing laboratory. All construction including electrical, mechanical, sewer, plumbing, HVAC, etc., shall be supervised and inspected by a qualified representative of the Contractor who shall certify that all construction complies with approved plans and specifications. Reports of tests and certification shall be made a part of the construction project file and submitted for review and approval by the Government as required.
- d. Upon completion of the construction, the Contractor shall notify the Contracting Officer who will arrange to conduct a final acceptance/inspection by the public works officer or base commanding officer or his/her designated representative, to ensure compliance with plans and specifications.
- e. The Contractor shall deliver to the Contracting Officer, or his/her designated representative, two sets of full size prints of the construction drawings, accurately marked in red with adequate dimensions, to show all variations between the construction actually provided and that indicated or specified in the construction contract documents, including, buried or concealed construction. The representations of such changes shall conform to standard drafting practice and shall include such supplementary notes, legends and details as necessary to clearly portray the as-built construction.

**24. Clean Air and Water**

- a. The Contractor agrees:
  - (1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
  - (2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
  - (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
  - (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (a)(4).

b. Definitions

"Air Act," means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause means -

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a state under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance." Conformity with clean air or water standards or a schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility." Any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," means Clean Water Act (33 U.S.C. 1251, et seq.).

## **25. Environmental Protection**

- a. General Requirements. The Contractor shall provide and maintain environmental protection during the life of the contract as defined herein. Environmental protection shall be provided to correct conditions that develop during the renovation of permanent environmental protection features, all that are required to control pollutions that develop during normal renovation practice but are not associated with permanent control features incorporated in the project. The Contractor's operation shall comply with all federal, state and local regulations pertaining to water, air, solid waste and noise pollution.
- b. Definitions
  - (1) Sediment. Soil and other debris that has been eroded and transported by runoff water.
  - (2) Solid Waste. Rubbish, debris, garbage and other discarded solid materials resulting from industrial, commercial, and agricultural operations and from community activities.
  - (3) Rubbish. A variety of combustible and noncombustible wastes such as ashes, waste materials that result from renovation or maintenance and repair work, leaves and tree trimmings.
  - (4) Debris. Includes both combustible and noncombustible wastes, such as ashes, waste materials that result from renovation or maintenance and repair work, leaves and tree trimmings.

- (5) Chemical Waste. Includes petroleum products, bituminous materials, salts, acids, alkalis, herbicides, pesticides, organic chemicals, and inorganic wastes.
- (6) Sanitary Wastes
  - (a) Sewage. That which is considered as domestic sanitary sewage.
  - (b) Garbage. Refuse and scraps resulting from preparation, cooking, dispensing and consumption of food.
  - (c) Asbestos and asbestos material. Asbestos is defined as actinolite, amosite, anthophyllite, chrysotile, crocidolite and tremolite. Asbestos material is defined as asbestos or any material containing asbestos (such as asbestos waste, scrap, debris bags, containers, equipment, and asbestos contaminated clothing consigned for disposal).

**26. Control and Disposal of Waste; Solid Waste, and Chemical and Sanitary Wastes**

- a. General. Wastes shall be picked up and placed in containers which are emptied on a regular schedule at Contractor's expense. All handling and disposal shall be so conducted as to prevent contamination of the site and any other areas. On completion, the areas shall be left clean and natural looking. All signs of temporary work and activities incidental to renovation of the required permanent work in place shall be obliterated.
- b. Disposal of Rubbish and Debris. Contractor shall transport all waste off of government property and dispose of it in a manner that complies with federal, state and local requirements. The Contractor shall provide the Contracting Officer a copy of state and/or local permit or license which reflects such agency's approval and compliance with their solid waste disposal regulations. The permit or license and the location of the disposal area shall be provided prior to transporting any material off the government property.
- c. Garbage Disposal. Where the renovation project is located in an area where garbage collection by the station is accomplished on a scheduled basis, the Contractor shall place garbage in an appropriate container and the station will provide pickup and disposal service. In areas where there is no scheduled garbage collection, the Contractor shall transport the garbage to a pickup point or disposal area at the Contractor's expense. The preparation, cooking, and disposing of food are strictly prohibited on the project site.
- d. Sewage, Odor, and Pest Control. Sewage shall be disposed of through connection to municipal, district, or station sanitary sewage systems. Where such systems are not available, chemical toilets or comparably effective units shall be used with wastes periodically emptied into municipal, district, or station sanitary sewage systems. Provisions shall be made for pest control and for elimination of odors.

- e. Chemical Waste. Chemical waste shall be stored in corrosion resistant containers, removed from the project site, and disposed of not less frequently than monthly unless directed otherwise. Disposal of chemical waste shall be in accordance with standard established practices. Fueling and lubricating of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants to be discharged and burned oil shall be disposed of in accordance with approved procedures, meeting federal, state and local regulations. For oil and hazardous material spills which may be large enough to violate federal, state and local regulations, the Contracting Officer shall be notified immediately.

## **27. Inspections of Construction**

- a. Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- b. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the government. All work shall be conducted under the general direction of the Contracting Officer or his/her designated representative and is subject to inspection and test at all places and at all reasonable times before inspection to ensure strict compliance with the terms of the contract.
- c. Government inspections and tests are for the sole benefit of the government and do not:
  - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Contractor of responsibility for damage or loss of the material before acceptance;
  - (3) Constitute or imply acceptance; or,
  - (4) Affect the continuing rights of the government after acceptance of the completed work under paragraph 1.(i) below.
- d. The presence or absence of a government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- e. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and materials reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer or his/her authorized representative. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- f. The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- g. If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- h. If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- i. Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer or his/her authorized representative determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

## **28. Davis-Bacon and Related Acts**

- a. Notice to the Government of Labor Disputes
  - (1) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the contract, the Contractor shall immediately give notice, including all relevant information to the Contracting Officer.
  - (2) The Contractor agrees to insert the substance of this clause including this paragraph (2), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any 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 concerning the dispute.
- b. Contract Work Hours and Safety Standards Act - Overtime Compensation
  - (1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any work-week in which the individual is employed on such work to work in excess of (40) hours rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of (40) hours in such work week.

- (2) Violation: Liability for Unpaid Wages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor or subcontractor shall be liable to the united states (in the case of work done under contract for the district of Columbia or a territory, to such district or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work-week of (40) hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (3) Withholding for Unpaid Wages and Liquidated Damages. 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 any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (4) Payrolls and Basic Records
  - (a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Nothing in this paragraph shall require the duplication of required documents to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (b) The records to be maintained under paragraph (4)(i) of the clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (5) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provision set forth in paragraph (b)(1) through (5) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontractors. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

c. Davis Bacon Act

- (1) Minimum Wages

- (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.
  - (b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under sections 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wage 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.
  - (c) 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 the work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (2) Employee Classification(s) not listed
- (a) 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 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.

- (b) 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 disprove 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.
  - (c) 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.
- (3) 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.
  - (4) 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.
  - (5) 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 benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (6) Withholding of Funds. 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 the Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainees, or helper, employed or working on the site of the work, all or part of the wages required by the Contractor, 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.
- (7) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name and address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2)(b) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(b) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs 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.
- (8) Payroll Submission.
  - (a) The Contractor shall submit weekly for each week in which any Contractor 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.

- (b) 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, from the full wages earned, other than permissible deductions as set forth in regulations, 29 CFR Part 3; and,
  - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (c) 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. The falsification of any of the above certifications in this clause may subject the Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (9) 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 cause suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (10) Apprentices and Trainees
  - (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 (when appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman 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 a 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 for 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. Except as provided in 29 CFR 5.16, 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 trainees 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 who 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.

- d. 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, and 29 CFR Part 30.
- e. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- f. Subcontracts (Labor Standards). The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, contract work hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination - Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.
  - (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a complete statement and acknowledgment form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that 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.
- g. Contract Termination - Debarment. A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act Regulations. All ruling and interpretation of the Davis-Bacon and related acts contained in 29 CFR parts 1,3 and 5 are hereby incorporated by reference in this contract.
- i. Disputes Concerning Labor Standards. 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.

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

## **29. General Insurance Requirements**

The Contractor and any Subcontractor shall procure and maintain, at its own expense, and with a company or companies acceptable to the Contracting Officer, or his/her designated representative, the minimum insurance coverage set forth below and contain severability of interest provisions. The Contractor and any Subcontractor shall maintain all insurance until the completion of the contract. Prior to performance under this contract, the offeror shall provide certificates of insurance to the Contracting Officer. Failure by the Contractor or any Subcontractor to provide these certificates before commencing performance may constitute grounds for termination for default. 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 will be given to the Contracting Officer in the event of modification, cancellation, or non-renewal of any such insurance coverage.

The Contractor shall be responsible to review and insure all Subcontractors comply without insurance provisions contained herein and said insurance is maintained as specified. The Contractor shall provide copies of all Subcontractors insurance policies or Certificates of Insurance. A liability policy written on a "claims made form" will not be acceptable, excluding coverage for Environmental Impairment Liability (EIL) which is written on a "claims made form" basis. In addition, the United States Government and the Navy Exchange Service Command, shall be named in such certificates as Additional Insured, herein, with severability of interest clause.

The specific insurance requirements shall be determined by a review of the scope of work and stipulated in the contracting document. At a minimum, the Contractor and any Subcontractor shall provide adequate insurance coverage addressing their scope of work including any and all builders risk, operational, environmental, automobile, and workers' compensation liability.