

<b>SOLICITATION , OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NUMBER	2. TYPE OF SOLICITATION	3. DATE ISSUED	PAGE OF PAGES
	DTMA3R10009	<input type="checkbox"/> Sealed Bid <input checked="" type="checkbox"/> Negotiated	09/01/2010	Page 1 of 18

IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO. DTMA3C10026	5. REQUISITION/PURCHASE REQUEST NO. PRCR1000227	6. PROJECT NO.
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7. ISSUED BY DOT/Maritime Administration, DGO Acquisition 500 Poydras Street, Room 1223 New Orleans, LA 70130-3394	CODE 00093	8. ADDRESS OFFER TO DOT/Maritime Administration, DGO Acquisition 500 Poydras Street, Room 1223 New Orleans, LA 70130-3394	CODE 00093
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9. FOR INFORMATION CALL:	A. NAME Aline Smith	B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) (504) 218-6522 ext.
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**SOLICITATION**

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

**BEAUMONT RESERVE FLEET HURRICANE IKE DAMAGE REPAIRS - PHASE II**

The site is an active Maritime Administration reserve fleet facility and will continue to be used as an active site for the duration of the Contract.

The work consists of removing damaged concrete work, installation of concrete paving and walkways, driving precast concrete piles, installing concrete floating docks, installing utilities such as storm drainage, demolishing the existing finger piers, and installing a replacement bulkhead. The work herein described and shown on the drawings shall be complete in every detail not withstanding every item necessarily involved is mentioned. The contractor shall be held to provide all labor and materials necessary for the entire completion of the work intended to be included and described in the contract, and shall not avail itself of any manifestly unintentional error or omissions, if same should occur.

The work of this contract shall be under a unit price basis from the Government in accordance with the conditions of the contract.

Offeror shall submit signed copy of SF1442, acknowledging any amendments(if applicable), along with their pricing using the attached J1 Price Schedule. Offeror should be made by COB Tuesday, 14 September 2010 to Aline Smith, Contracting Officer, 500 Poydras Street, Suite 1223, New Orleans, LA 70130-3396.

11. The Contractor shall begin performance within <u>14</u> calendar days and complete it within <u>210</u> calendar days after receiving <input type="checkbox"/> award <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory <input type="checkbox"/> negotiable. ( See Clause 3 FAR 52.211-10 )
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12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? ( If "YES", indicate within how many calendar days after award in Item 12B.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS  7
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13. ADDITIONAL SOLICITATION REQUIREMENTS:

- A. Sealed offers in original and 0 copies to perform the work required are due at the place specified in Item 8 by 12:00 am (hour) local time 09/14/2010 (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.
- B. An offer guarantee  is,  is not required.
- C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.
- D. Offers providing less than \_\_\_\_\_ calendar days for government acceptance after the date offers are due will not be considered and will be rejected.



## PRICE SCHEDULE

		<b>American Contractor and Technology, Inc.</b>			
		108 North Pat Street Scott, LA 70583			
<b>CONTRACT LINE ITEMS</b>					
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT
0001AA	CONSTRUCTION SURVEY	1	LS	NA	\$7,050.00
0001AB	DEMOLITION - includes demolition of small boat piers, all appurtenances, and fencing IWO repairs	1	LS	NA	\$9,686.70
0001AC	FLOATING FINGER PIERS - includes design, fabrication, transportation and installation of floating pier system	1	LS	NA	\$321,055.59
0001AD	BULKHEAD REPAIR - includes installation of sheet pile bulkhead, bulkhead cap and renewal of removed fencing	140	LF	\$0.00	\$362,642.13
0001AE	PAVING AND CONCRETE REPAIR - includes saw cut and demolition of existing concrete, subgrade preparation, installation of crushed aggregate, installation of new pavement, renewal of walkway and section of ex-training building walkway	1	LS	NA	\$113,808.15
0001AF	GANGWAY FABRICATION AND INSTALLATION - includes fabrication, transportation and installation of gangway to floating pier system	1	LS	NA	\$10,575.00
0001AG	STORM DRAIN RENEWAL - includes removal and disposal of existing storm drain piping, fill and grading, furnishing and installing manholes, installation of two new drain pipes, installation of culverts under walkway, removal and installation of two new outfalls, installation of drain pipe terminations	1	LS	NA	\$212,610.43
0001AH	TESC	1	LS	NA	\$14,100.00
	<b>TOTAL</b>				<b>\$1,051,528.00</b>

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## COMMERCIAL CLAUSES

### 1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://acquisition.gov/far/current/html/FARTOCP52.html>

<b>Clause</b>	<b>Title</b>	<b>Date</b>
52.211-10 Alt I	Commencement, Prosecution, and Completion of Work (Apr 1984) - Alternate I	April 1984
52.211-13	Time Extensions	September 2000
52.211-18	Variation in Estimated Quantity	April 1984
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction	February 1999
52.222-27	Affirmative Action Compliance Requirements for Construction	February 1999
52.225-10	Notice of Buy American Act Requirement - Construction Materials	February 2009
52.227-04 Patent	Indemnity-Construction Contracts	December 2007
52.232-05	Payments under Fixed-Price Construction Contracts	September 2002
52.236-02 Differing	Site Conditions April	1984
52.236-03	Site Investigation and Conditions Affecting the Work	April 1984
52.236-05	Material and Workmanship	April 1984
52.236-06	Superintendence by the Contractor	April 1984
52.236-07	Permits and Responsibilities Novem	ber 1991
52.236-08	Other Contracts	April 1984
52.236-09	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	April 1984
52.236-10	Operations and Storage Areas	April 1984
52.236-11	Use and Possession Prior to Completion	April 1984
52.236-12	Cleaning Up	April 1984
52.236-13	Accident Prevention	November 1991
52.236-14	Availability and Use of Utility Services	April 1984
52.236-15	Schedules for Construction Contracts	April 1984
52.236-17	Layout of Work	April 1984
52.236-21	Specifications and Drawings for Construction	February 1997
52.246-12	Inspection of Construction	August 1996
52.246-21	Warranty of Construction	March 1994
52.248-03	Value Engineering-Construction	September 2006
52.249-10	Default (Fixed-Price Construction)	April 1984

### 2 DOT ORDER 3902.10 "TEXT MESSAGING WHILE DRIVING"

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**CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

a) Definitions. The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O.

"Driving"-

(1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. (See definition in DOT Order 3902.10)

(b) In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1,2009, and DOT Order 3902.10, Text Messaging While Driving, December 30,2009, contractors and subcontractors are encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving--

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as-

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

( c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts that exceed the micro-purchase threshold, other than subcontracts for the acquisition of commercially available off-the-shelf items. (End of clause)

3      52.211-10      COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK      APRIL 1984

The Contractor shall be required to (a) commence work under this contract within .fourteen(14) calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 210 calendar days The time stated for completion shall include final cleanup of the premises.

4 52.211-12      LIQUIDATED DAMAGES--CONSTRUCTION      SEPTEMBER 2000

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$974.00 for each calendar day of delay until the work is completed or accepted.

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

(End of clause)

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5 52.225-09 BUY AMERICAN ACT - CONSTRUCTION MATERIALS

FEBRUAR  
Y 2009

(a) Definitions. As used in this clause-

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

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

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

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

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

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

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

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

"Cost of components" means—

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

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

"Domestic construction material" means—

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

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

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

(ii) The construction material is a COTS item.

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

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

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

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

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

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

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

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

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

(c) Request for determination of inapplicability of the Buy American Act. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

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

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

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

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign Construction Material	_____	_____	_____
Domestic Construction Material	_____	_____	_____
Item 2:			
Foreign Construction Material	_____	_____	_____
Domestic Construction Material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate is issued).]

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## SECTION H -- SPECIAL CONTRACT REQUIREMENTS

### H.1 MCL.H-3 INDEMNITY AND INSURANCE

AUGUST  
2005

The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever because of accident or injury to persons or property of others occurring in connection with the operations under this contract. The Contractor shall secure, pay the premiums for and keep in force until the expiration of this contract, and any renewal thereof, adequate insurance. Such insurance to specifically include liability assumed by the Contractor under this contract.

Each policy of insurance shall contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest shall not be effective unless the insurer or the Contractor gives written notice of cancellation or change as required to the Contracting Officer. When the coverage is provided by self-insurance, the Contractor shall not change or decrease the coverage without the Administrative Contracting Officer's prior approval.

A certificate of each policy of insurance shall be furnished to the Contracting Officer within ten (10) days after notice of award certifying, among other things, that the policy contains the aforesaid endorsement. The insurance companies providing the above insurance shall be satisfactory to the Government. Notices of policy changes shall be furnished to the Contracting Officer.

The contractor shall provide at the Contractor's expense, within five days of request from the MARAD contracting officer, a copy of all original insurance policies. These may be sent by mail or facsimile machine.

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SECTION I -- CONTRACT CLAUSES

I.1 1252.219-71 SECTION 8(A) DIRECT AWARDS

1252.219-71 Section 8(a) Direct Awards.

As prescribed in (TAR) 48 CFR 1219.811-3(f), insert the following clause:

SECTION 8(A) DIRECT AWARDS

(APR 2005)

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

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

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

(c) The contractor agrees:

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

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

(End of clause)

I.2 52.252-02 CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://acquisition.gov/far/current/html/FARTOCP52.html>

Clause	Title	Date
1252.219.10	SUBCONTRACTING PROGRAM FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS	May 1999
52.203-03 Gratuities		April 1984
52.203-05	Covenant Against Contingent Fees	April 1984
52.203-07	Anti-Kickback Procedures	July 1995
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	January 1997
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	January 1997
52.204-04	Printed or Copied Double-Sided on Recycled Paper	August 2000
52.204-07	Central Contractor Registration	April 2008

52.209-06	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	September 2006
52.215-02	Audit and Records--Negotiation	March 2009
52.215-11	Price Reduction for Defective Cost or Pricing Data--Modifications	October 1997
52.215-21 Alt IV	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications (Oct 1997) - Alternate IV	October 1997
52.216-24	Limitation of Government Liability	April 1984
52.216-25 Contract	Definitization	October 1997
52.219-08	Utilization of Small Business Concerns	May 2004
52.219-14	Limitations On Subcontracting Decem	ber 1996
52.219-27	Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside	May 2004
52.222-01	Notice to the Government of Labor Disputes	February 1997
52.222-03	Convict Labor	June 2003
52.222-04	Contract Work Hours and Safety Standards Act - Overtime Compensation	July 2005
52.222-09	Apprentices and Trainees	July 2005
52.222-10	Compliance with Copeland Act Requirements	February 1988
52.222-11	Subcontracts (Labor Standards)	July 2005
52.222-12	Contract Termination-Debarment	February 1988
52.222-13	Compliance with Davis-Bacon and Related Act Regulations	February 1988
52.222-14	Disputes Concerning Labor Standards	February 1988
52.222-15 Certification	of Eligibility February	1988
52.222-21	Prohibition of Segregated Facilities	February 1999
52.222-26	Equal Opportunity	March 2007
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	September 2006
52.222-36	Affirmative Action For Workers with Disabilities	June 1998
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	September 2006
52.223-06	Drug-Free Workplace	May 2001
52.223-14	Toxic Chemical Release Reporting	August 2003
52.225-13	Restrictions on Certain Foreign Purchases	June 2008
52.227-01 Authorization	and Consent	December 2007
52.228-02 Additional	Bond Security October	1997
52.228-05	Insurance - Work on a Government Installation	January 1997
52.228-11	Pledges of Assets	September 2009
52.228-14	Irrevocable Letter of Credit	December 1999
52.228-15	Performance and Payment Bonds--Construction	November 2006
52.229-04	Federal, State, and Local Taxes (State and Local Adjustments)	April 2003
52.232-17 Int	erest	October 2008
52.232-23 Alt I	Assignment of Claims (Jan 1986) - Alternate I	April 1984
52.232-27	Prompt Payment for Construction Contracts	October 2008
52.232-33	Payment by Electronic Funds Transfer-Central Contractor Registration	October 2003
52.233-01 Di	sputes	July 2002
52.233-03	Protest after Award	August 1996
52.236-26	Preconstruction Conference	February 1995

52.242-13 B	ankruptcy	July 1995
52.242-14	Suspension of Work	April 1984
52.243-04 C	hanges	June 2007
52.244-06	Subcontracts for Commercial Items	June 2010
52.249-02 Alt I	Termination for Convenience of the Government (Fixed-Price) (May 2004) - Alternate I	September 1996
52.253-01	Computer Generated Forms	January 1991

I.3 52.222-06 DAVIS-BACON ACT

JULY 2005

- (a) Definition.—“Site of the work”— (1) Means—
- (i) The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and
  - (ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—
    - (A) Located in the United States; and
    - (B) Established specifically for the performance of the contract or project;
- (2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
- (i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and
  - (ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;
- (3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.
- (b)(1) 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, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) 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.
- (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.

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(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting

Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(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.

(d) 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.

(e) 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 mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

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

## I.5 52.222-08 PAYROLLS AND BASIC RECORDS

JUNE 2010

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

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

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

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

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been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

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

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

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

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

I.6 52.252-02 CLAUSES INCORPORATED BY REFERENCE

FEBRUAR  
Y 1998

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://acquisition.gov/far/current/html/FARTOCP52.html>

I.7 MA1252.1 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE  
(COTR)

MAY 1999

a. The Contracting Officer's Technical Representative (COTR) is responsible for the technical aspects of the project and technical liaison with the Contractor. The COTR investigates differing conditions to determine whether they increase or decrease the cost and time required for performing work. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.

b. It is the COTR's responsibility to protect the Government's interests in the actual performance of the contract work, and to see that such work is accomplished according to the contract specifications and drawings. The COTR shall prepare and submit any periodic and/or special progress reports necessary to keep the Contracting Officer fully informed.

c. The COTR shall be delegated the following authority to assist in the performance of his duties:

1. Inspect all work done, both during and after completion, as well as all materials furnished. Such inspection may extend to all or any part of the work and the preparation, fabrication or manufacture of the Contractor-furnished materials to be used on and incorporated into the job.

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2. Promptly notify the prime Contractor in writing of any failure of the work or materials to conform to the contract specifications or drawings. Notify the Contracting Officer in writing of any anticipated delay in the delivery schedule.
  3. Reject materials.
  4. Approve or reject all drawings which must be submitted for review under the contract terms.
  5. Act as property administrator for Government property furnished to or acquired by the Contractor and perform the duties and responsibilities outlined in the Government-Furnished Property clause, if applicable. Send the Contractor's receipt for the Government property delivered to the Contractor to the Contracting Officer within seven (7) days after the transfer has been effected.
  6. Determine the amount and quality of the several kinds of work performed and materials furnished, which are to be paid under the progress payments.
  7. Issue written stop work orders under emergency conditions where continuation of the work would adversely affect the completion of the project or cause rework. Said order shall be signed by the Contractor's on-site superintendent and a copy will be immediately forwarded to the Contracting Officer for issuance of a formal stop work order.
- d. The Contracting Officer may designate assistant COTR(s) to act by naming such assistant in writing, specifying the authority of the assistant, and transmitting a copy of such designation to the Contractor.
- e. The COTR may be changed by the Contracting Officer at any time, but notification of the change, including the name and address of the successor COTR, will be promptly provided to the Contractor by the Contracting Officer in writing.
- f. The COTR to be assigned on any contract awarded subject to this agreement shall be designated in the individual award document.

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SECTION J -- LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

J.1 LIST OF ATTACHMENTS

LIST OF ATTACHMENTS

- J1 SCHEDULE OF PRICES
- J2 SPECIFICATIONS
- J3 DRAWINGS
- J4 DOL WAGE DETERMINATION