

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
05 NOV 14 PM 2:55

DEPARTMENT: Development & Infrastructure Services

AGENDA DATE: November 22, 2005

CONTACT PERSON/PHONE: Pat Adatao, 4853

DISTRICT(S) AFFECTED: 8

SUBJECT:

Request Council approval of a resolution to allow the City Manager to sign the GSA Amendment of Solicitation of Contract #PC03 and any other GSA/federal forms required to complete the design and construction of the Santa Fe Bridge/Paso Del Norte Port of Entry Expansion project.

BACKGROUND / DISCUSSION:

The City of El Paso is handling of the design of a portion of the new storm drain system that will support the federal project to expand the Santa Fe Bridge/Paso Del Norte Port of Entry. The City is designing the portion of the storm drain that traverses through City property.

Approval of this item will allow the City to accept additional funding to complete the construction of this project. The project supports the upcoming expansion of GSA facilities at the Santa Fe/Paso Del Norte Bridge.

PRIOR COUNCIL ACTION:

Mayor and Council have previously approved purchase order increases to complete the project design phase.

AMOUNT AND SOURCE OF FUNDING:

The total cost of the project will be \$543,419.88 which will be completely funded by the GSA.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a GSA Standard Form 30, *Amendment of Solicitation/Modification of Contract*, and other GSA/Federal Forms required for the design completion and construction of the Storm Drain System for the Santa Fe Bridge/Paso Del Norte Port of Entry Expansion Project within City property.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to make the necessary budgetary adjustments or transfers to carry out the intent of this Resolution

ADOPTED this 22nd day of November 2005.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa A. Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Patricia D. Aduato,
Deputy City Manager
Development & Infrastructure Services

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE PAGE OF PAGES
 2. AMENDMENT/MODIFICATION NO. PC03 3. EFFECTIVE DATE OCT 25, 2005 4. REQUISITION/PURCHASE REQ. NO. 7PD-06-0006 5. PROJECT NO. (If applicable)

6. ISSUED BY GSA PBS 7PWB FRITZ G LANHAM FED BLDG 819 TAYLOR ST RM 12B FORT WORTH TX 76102 JOHN E DAVIS H0Z 817-978-7476
 7. ADMINISTERED BY (If other than Item 6) See Block 6

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) EL PASO, CITY OF 2 CIVIC CENTER PLAZA 7TH FLOOR EL PASO TX 799011196
 DUNS: 058873019 Cage Code: 3XVY1
 9A. AMENDMENT OF SOLICITATION NO. (X)
 9B. DATED (SEE ITEM 11)
 10A. MODIFICATION OF CONTRACT/ORDER NO. GS-07P-04-UKM-1055 x
 10B. DATED (SEE ITEM 13) SEP 10, 2004
 CODE 00004468 FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.
 Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
 See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. FAR 43.103(b)
X	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
 Construction of Storm Drain, Paso Del Norte Port of Entry, El Paso, TX

- See attached continuation page 2.
- The City of El Paso, TX, will construct a storm drain in accordance with the drawings provided by CEA Engineering Group.
- The new contract price is \$543,419.88 in lieu of \$46,624.00, an increase of \$496,795.88.
- The construction completion date is July 14, 2006.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
 JOHN E DAVIS, CONTRACTING OFFICER
 817-978-7476
 15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign) 15C. DATE SIGNED 16B. UNITED STATES OF AMERICA (Signature of Contracting Officer) 16C. DATE SIGNED
 10.25.2005

SCHEDULE Continued

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT \$
0004	Storm Sewer City Relocation El Paso For the City of El Paso to relocate storm sewer in support of project NTX00205 Accounting and Appropriation Data: PJ4G01167.2006.192X.07.PG51.P072W0B1.516.PG311.NTX00205.TX0942PN.	1.00	LS	496,795.88	496,795.88

PROJECT BUDGET SUMMARY FORM

Project: Project Status:
 Funding Source: District: Date:
 Dept. ID: Fund: Project/Grant Detail:

\$ AMOUNT

508000: Land Acquisition	
508009: Furniture and Fixtures	
508016: Contractual Design	\$ 46,250.00
508017: Survey	
508019: Appraisals	
508022: Administrative (advertising, postage, printing)	
508024: Materials Testing Asbestos Surveys Asbestos Abatement	\$ 12,080.28
508026: Construction Inspection	\$ 26,772.00
508027: Construction Costs Demolition Utility Relocations Utility Relocations Paid by PSB Contingency	\$ 402,676.00
508050: In-House Design	
508051: Program Management Review	\$ 15,000.00

Project Cost Estimate

Total Approved Project Budget **Variance**

User Department

Engineering Department

Financing Authority

Building and Planning Services

Section Chief



Program Manager

General Decision Number: TX030064 06/17/2005 TX64

Superseded General Decision Number: TX020064

State: Texas

Construction Type: Heavy

County: El Paso County in Texas.

HEAVY CONSTRUCTION, (INCLUDING WATER/SEWER LINES)

Modification Number	Publication Date
0	06/13/2003
1	04/09/2004
2	10/08/2004
3	12/24/2004
4	06/17/2005

* ELEC0583-003 12/01/2004

HEAVY CONSTRUCTION (INCLUDING WATER/SEWER LINES)

	Rates	Fringes
Electrician.....	\$ 18.50	4.05+4.25%

* SUTX2005-015 05/13/2005

	Rates	Fringes
Carpenter (including Form Work)	\$ 12.21	0.00
Cement Mason/Concrete Finisher	\$ 9.29	0.00
Laborers:		
Common.....	\$ 7.96	0.00
Pipelayer.....	\$ 8.48	0.00
Power Equipment Operator:		
Backhoe.....	\$ 11.57	0.00
Front End Loader.....	\$ 10.43	0.00
Grader.....	\$ 11.19	0.00
Truck Driver.....	\$ 9.17	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

SOLICITATION PROVISIONS (NEGOTIATED)
(10/5/04)

1. FAR 52.215-1 INSTRUCTIONS TO OFFERORS -- COMPETITIVE ACQUISITION (JAN 2004)

(a) Definitions. As used in this provision--

Discussions are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

In writing, writing, or written means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Proposal modification is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

Time, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals. (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show--

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, revision, and withdrawal of proposals. (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and --

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It was the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitation may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representation, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless otherwise the provision of FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed--in whole or in part--for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of--or in connection with-- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) Debriefing. If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

2. FAR 52.237-1 - SITE VISIT (APR 1984)

(Applies when services other than construction are to be performed on Government installations.)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

3. FAR 52.247-6 - FINANCIAL STATEMENT (APR 1984) (*Applies to solicitations for transportation or for transportation related services.*)

The offeror shall, upon request, promptly furnish the Government with a current certified statement of the offeror's financial condition and such data as the Government may request with respect to the offeror's operations. The Government will use this information to determine the offeror's financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offeror to possible rejection on responsibility grounds.

4. FAR 52.222-46 - EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993) (*This provision applies to service contracts over \$250,000.*)

(a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As a part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and

regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirement.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

5. GSAR 552.252-5 - AUTHORIZED DEVIATIONS IN PROVISIONS (DEVIATION FAR 52.252-5) (SEP 1999)

(a) Deviation to FAR provisions.

(1) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) provision by the addition of "(DEVIATION)" after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).

(2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) provision that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR provision no.))" after the date of the provision.

(b) Deviation to GSAR provisions. This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation provision by the addition of "(DEVIATION)" after the date of the provision.

(c) "Substantially the same as" provisions. Changes in wording of provisions prescribed for use on a "substantially the same as" basis are not considered deviations.

6. GSAR 552.219-72 - PREPARATION, SUBMISSION, AND NEGOTIATION OF SUBCONTRACTING PLANS (JUN 2005) (applicable to negotiated source selection procurements and offer exceeds \$500,000 (\$1,000,000 for construction))

(a) An offeror, other than a small business concern, submitting an offer that exceeds \$500,000 (\$1,000,000 for construction) shall submit a subcontracting plan with its initial offer. The subcontracting plan will be negotiated concurrently with price and any required technical and management proposals, unless the offeror submits a previously-approved commercial plan.

(b) Maximum practicable utilization of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. The General Services Administration (GSA) expects that an offeror's subcontracting plan will reflect a commitment to assuring that small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns are provided the maximum practicable opportunity, consistent with efficient contract performance, to participate as subcontractors in the performance of the resulting contract. An offeror submitting a commercial plan can reflect this commitment through subcontracting opportunities it provides that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(c) GSA believes that this potential contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors. Consequently, in addressing the eleven elements described at FAR 52.219-9(d) of the clause in this contract entitled Small Business Subcontracting Plan, the offeror shall:

(1) Demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns in performing the contract.

(2) Include a description of the offeror's subcontracting strategies used in any previous contracts, significant achievements, and how this plan will build upon those earlier achievements.

(3) Demonstrate through its plan that it understands the small business subcontracting program's objectives and GSA's expectations, and it is committed to taking those actions necessary to meet these goals or objectives.

(d) In determining the acceptability of any subcontracting plan, the Contracting Officer will take each of the following actions:

(1) Review the plan to verify that the offeror demonstrates an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the program and has included all the information, goals, and assurances required by FAR 52.219-9.

(2) Consider previous goals and achievements of contractors in the same industry.

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns.

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(e) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

7. GSAR 552.219-73 GOALS FOR SUBCONTRACTING PLAN (JUN 2005) Alternate I (SEP 1999)

(applicable to negotiated procurements not using source selection procedures and subcontracting plan required)

(a) Maximum practicable utilization of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits.

(1) The General Services Administration's (GSA's) commitment to ensuring that maximum practicable opportunity is provided to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns to participate as subcontractors in the performance of this contract, consistent with its efficient performance, must be reflected in the offeror's subcontracting plan submitted pursuant to the clause of this contract at FAR 52.219-9, Small Business Subcontracting Plan.

(2) In addressing the eleven elements described at FAR 52.219-9(d), the offeror shall demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns in performing this contract. An offeror submitting a commercial plan can demonstrate its commitment in providing maximum practicable opportunities through subcontracting opportunities it provides to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(3) The subcontracting plan shall include a description of the offeror's subcontracting strategies used in previous contracts and significant achievements, with an explanation of how this plan will build upon those earlier achievements. Additionally, the offeror shall demonstrate through its plan that it understands the small business subcontracting program's objectives, GSA's expectations, and is committed to taking those actions necessary to meet these goals or objectives.

(b) In determining the acceptability of any subcontracting plan, the Contracting Officer will—

(1) Review the plan to verify that the offeror has demonstrated an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the programs and has included all the information, goals, and assurances required by FAR 52.219-9;

(2) Consider previous goals and achievements of contractors in the same industry;

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns; and

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(c) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

8. FAR 52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT-CONSTRUCTION MATERIALS (MAY 2002) *(applicable if the solicitation contains the clause, FAR 52.225-9)*

(a) *Definitions.* "Construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act-Construction Material" (Federal Acquisition Regulation (FAR) clause 52.225-9).

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

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

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

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

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

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

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

Alternate I (MAY 2002) is applicable if the box is checked: (CO determined that insufficient time is available to process a determination regarding the inapplicability of the Buy American Act prior to receipt of offers.)

Alternate I (MAY 2002) Substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance or Payments Program shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9.

9. FAR 52.225-12 NOTICE OF BUY AMERICAN - CONSTRUCTION MATERIALS UNDER TRADE AGREEMENT (JAN 2005) (applicable if the solicitation contains the clause, FAR 52.225-11

(a) *Definitions.* "Construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

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

(d) Alternate offers.

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

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

Alternate I (MAY 2002) is applicable if the box is checked: (CO determined that insufficient time is available to process a determination regarding the inapplicability of the Buy American Act prior to receipt of offers.)

Alternate I (MAY 2002) Substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance or Payments Program shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11.

Alternate II (MAY 2002) is applicable to acquisitions greater than or equal to \$6,806,000 but less than \$7,068,419.

Alternate II (MAY 2002) Substitute the following paragraph paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* "Australian, Chilean, or Moroccan construction material," "Caribbean Basin country construction material," "construction material," "domestic construction material," "foreign construction material," "least developed country construction material," and "WTO GPA country construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act—Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, and the offeror shall be required to furnish such domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material. An offer based on use of the foreign construction material for which an exception was requested—

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

**CONSTRUCTION CONTRACT CLAUSES (FIXED PRICE)
(FAC 2005-05 and GSAM Change 16)**

1. **FAR 52.252.2 Clauses Incorporated by Reference (2/98)** 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://www.arnet.gov/far/> and www.arnet.gov/GSAM/gsam.html.

The following clauses are incorporated by reference:

<u>CATEGORY</u>	<u>REFERENCE</u>	<u>CLAUSE NO. AND TITLE</u>
GENERAL	FAR 52.202-1	2. Definitions (07-04)
	GSAR 552.236-70	3. Definitions (04-84)
	GSAR 552.236-71	4. Authorities and Limitations (04-84)
	GSAR 552.203-71	5. Restriction on Advertising (09-99)
	GSAR 552.252-6	6. Authorized Deviations in Clauses (Deviation FAR 52.252-6) (09-99)
	GSAR 552.236-72	7. Specialist (04-84)
	GSAR 552.236-82	8. Subcontracts (04-84)
	GSAR 552.211-71	9. Standard References (09-99)
	FAR 52.236-8	10. Other Contracts (04-84)
	FAR 52.225-14	11. Inconsistency Between English Version and Translation of Contract (02-00)
	FAR 52.236-7	12. Permits and Responsibilities (11-91)
	FAR 52.253-1	13. Computer Generated Forms (01-91)
	FAR 52.204-4	14. Printed or Copied Double sided on Recycled Paper (08-00)
	FAR 52.214-34	15. Submission of Offers in the English Language (04-91)
	FAR 52.214-35	16. Submission of Offers in U.S. Currency (04-91)
	FAR 52.204-7	17. Central Contractor Registration (10-03)
	STANDARDS OF CONDUCT	FAR 52.203-3
FAR 52.203-5		19. Covenant Against Contingent Fees (04-84)
FAR 52.203-7		20. Anti-Kickback Procedures (07-95) Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
FAR 52.203-8		21. (01-97)
FAR 52.203-10		22. Price or Fee Adjustment for Illegal or Improper Activity (01-97)
FAR 52.203-12		23. Limitation on Payments to Influence Certain Federal Transactions (6-03)
BONDS AND INSURANCE	FAR 52.228-1	24. Bid Guarantee (09-96)
	FAR 52.228-2	25. Additional Bond Security (10-97)
	FAR 52.228-11	26. Pledges of Assets (02-92)
	FAR 52.228-12	27. Prospective Subcontractor Requests for Bonds (10-95)
	FAR 52.228-14	28. Irrevocable Letter of Credit (12-99)
	FAR 52.228-15	29. Performance and Payment Bonds - Construction (07-00)
	FAR 52.228-5	30. Insurance – Work on a Government Installation (01-97)
GSAR 552.228-70	31. Workers' Compensation Laws (09-99)	
SITE CONDITIONS	FAR 52.236-2	32. Differing Site Conditions (04-84)
	FAR 52.236-3	33. Site Investigations and Conditions Affecting the Work (04-84)
	GSAR 552.236-76	34. Measurements (04-84)
SPECIFICATIONS AND DRAWINGS	FAR 52.236-21	35. Specifications and Drawings for Construction (2-97) Alt 1 (04-84)
	GSAR 552.236-77	36. Specifications and Drawings (09-99)
	GSAR 552.236-78	37. Shop Drawings, Coordination Drawings, and Schedules (09-99)

SCHEDULES	FAR 52.236-15	38. Schedules for Construction Contracts (04-84)
PERFORMANCE	FAR 52.236-26	39. Pre-Construction Conference (02-95)
	FAR 52.236-6	40. Superintendence by the Contractor (04-84)
	FAR 52.236-5	41. Material and Workmanship (04-84)
	GSAR 552.236-79	42. Samples (04-84)
	FAR 52.236-17	43. Layout of Work (04-84)
	FAR 52.236-14	44. Availability and Use of Utility Services (04-84)
	GSAR 552.236-75	45. Use of Premises (04-84)
	FAR 52.236-10	46. Operations and Storage Areas(04-84)
	GSAR 552.236-80	47. Heat (04-84)
	GSAR 552.236-74	48. Working Hours (04-84) Protection of Existing Vegetation, Structures, Equipment, Utilities and Improvements (04-84)
	FAR 52.236-9	49. Improvements (04-84)
	FAR 52.236-13	50. Accident Prevention (11-91) -or- Accident Prevention (11-91) Alt I (11-91) (Projects over 1 year in duration or involving hazardous materials)
	FAR 52.236-12	51. Cleaning Up (04-84)
USE AND POSSESSION	FAR 52.236-11	52. Use and Possession Prior to Completion (04-84)
	GSAR 552.236-81	53. Use of Equipment by the Government (04-84)
INSPECTION	FAR 52.246-12	54. Inspection of Construction(08-96)
	GSAR 552.246-72	55. Final Inspection and Tests (09-99)
WARRANTY AND GUARANTEES	FAR 52.246-21	56. Warranty of Construction (3-94) Alt 1 (04-84)
	GSAR 552.246-75	57. Guarantees (05-89)
BUY AMERICAN	FAR 52.225-9	58. Buy American Act – Construction Materials (01-05) (under \$6,481,000) Buy American Act – Construction Materials Under Trade Agreements (01-05) (fill in)
	FAR 52.225-11	59. and (>/\$6,725,000) (use Alt 1 if valued at >= \$6,725,000 but < \$7,611,532)
	FAR 52.225-13	60. Restrictions on Certain Foreign Purchases (03-05)
	FAR 52.247-63	61. Preference for U.S. - Flag Air Carriers (06-03)
	FAR 52.247-64	62. Preference for Privately Owned U.S. - Flag Commercial Vessels (04-03)
ENVIRONMENTAL PROTECTION	FAR 52.223-5	63. Pollution Prevention and Right-to-Know Information (08-03)
	FAR 52.223-6	64. Drug-Free Workplace (05-01)
	FAR 52.223-9	65. Estimate of Percentage of Recovered Material Content for EPA Designated Items (08-00) Alt I (08-00)
	FAR 52.223-11	66. Ozone-Depleting Substances (05-01)
	FAR 52.223-12	67. Refrigeration Equipment and Air Conditioners (05-95)
	FAR 52.223-14	68. Toxic Chemical Release Reporting (08-03)
EMPLOYMENT PRACTICES AND LABOR STANDARDS	FAR 52.222-1	69. Notice to the Government of Labor Disputes (02-97)
	FAR 52.222-3	70. Convict Labor (06-03)
	FAR 52.222-4	71. Contract Work Hours and Safety Standards Act - Overtime Compensation (07-05)
	FAR 52.222-6	72. Davis-Bacon Act (07-05)
	FAR 52.222-7	73. Withholding of Funds (02-88)
	FAR 52.222-8	74. Payroll and Basic Records (02-88)
	FAR 52.222-9	75. Apprentices and Trainees (07-05)
	FAR 52.222-10	76. Compliance with Copeland Act Requirements (02-88)
	FAR 52.222-11	77. Subcontracts (Labor Standards) (07-05)
	FAR 52.222-12	78. Contract Termination - Debarment (02-88)

	FAR 52.222-13	79. Compliance with Davis-Bacon and Related Act Regulations (02-88)
	FAR 52.222-14	80. Disputes Concerning Labor Standards (02-88)
	FAR 52.222-15	81. Certification of Eligibility (02-88)
	FAR 52.222-21	82. Prohibition of Segregated Facilities (02-99)
	FAR 52.222-26	83. Equal Opportunity (04-02)
	FAR 52.222-27	84. Affirmative Action Compliance Requirements for Construction (02-99) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other
	FAR 52.222-35	85. Eligible Veterans (12-01)
	FAR 52.222-36	86. Affirmative Action for Workers with Disabilities (06-98) Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and
	FAR 52.222-37	87. Other Eligible Veterans (12-01) Notification of Employee Rights Concerning Payment of Union Dues or Fees (12- 04)
	FAR 52.222-39	88.
SUBCONTRACTING	FAR 52.209-6	89. Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (01-05)
	FAR 52.219-8	90. Utilization of Small Business Concerns (05-04)
	FAR 52.219-9	91. Small Business Subcontracting Plan (07-05) Alt II (10-01) (Negotiation) or (Alt 1) (Sealed Bidding)
	FAR 52.219-16	92. Liquidated Damages –Subcontracting (01-99)
	FAR 52.244-2	93. Subcontracts (08-98)
	FAR 52.244-6	94. Subcontracts for Commercial Items (12-04)
PATENTS, DATA, AND COPYRIGHTS	FAR 52.227-1	95. Authorization and Consent (07-95)
	FAR 52.227-2	96. Notice and Assistance Regarding Patent and Copyright Infringement (08-96)
	FAR 52.227-4	97. Patent Indemnity –Construction Contracts (04-84)
TAXES	FAR 52.229-3	98. Federal, State, and Local Taxes (04-03)
ADJUSTMENTS	FAR 52.243-4	99. Changes(08-87)
	GSAR 552.243-71	100. Equitable Adjustments (04-84)
	GSAR 552.243-70	101. Pricing of Adjustments (04-89)
AUDITS	FAR 52.214-26	102. Audit and Records – Sealed Bidding (10-97)
	FAR 52.214-27	103. Price Reduction for Defective Cost or Pricing Data - Modifications – Sealed Bidding (10-97) [applicable to modifications equal to or exceeding \$500,000 and no exception applies]
<i>(Clauses 104 through 110 apply to negotiated procurements/awards.)</i>		
	FAR 52.214-28	104. Subcontractor Cost or Pricing Data –Modifications – Sealed Bidding (10-97) [applicable to modifications equal to or exceeding \$500,000 and no exception applies]
	FAR 52.215-2	105. Audit and Records - Negotiation (06-99)
	FAR 52.215-10	106. Price Reduction for Defective Cost or Pricing Data -Modifications (10-97) [applicable to modifications equal to or exceeding \$500,000 and no exception applies]
	FAR 52.215-13	107. Subcontractor Cost or Pricing Data – Modifications (10-97) [applicable to modifications equal to or exceeding \$500,000 and no exception applies]
	GSAR 552.215-70	108. Examination of Records by GSA (02-96)
	FAR 52.215-15	109. Pension Adjustments and Asset Reversions (10-04)
	FAR 52.215-18	110. Reversion or Adjustment of Plans for Post-Retirement Benefits Other than Pensions (07-05)
	FAR 52.215-21	111. Requirements For Cost or Pricing Data or Information other than

Cost or Pricing Data—Modifications (10-97)

PAYMENT	FAR 52.232-5	112. Payments under Fixed- Price Construction Contracts (09-02)
	FAR 52.232-27	113. Prompt Payment for Construction Contracts (10-03)
	FAR 52.232-17	114. Interest (06-96)
	FAR 52.232-23	115. Assignment of Claims (01-86)
	FAR 52.232-33	116. Payment by Electronic Funds Transfer-Central Contractor Registration (10-03)
	FAR 52.242-13	117. Bankruptcy (7-95)
	FAR 52.243-6	118. Change Order Accounting (4-84)
STOP WORK/ TERMINATION	FAR 52.242-14	119. Suspension of Work (4-84)
	GSAR 552.211-84	120. Non-compliance with Contract Requirements (2-96)
	FAR 52.249-2	121. Termination for Convenience of the Government (Fixed-Price) (5-04) Alt I (9-96)
	FAR 52.249-10	122. Default (Fixed-Price Construction) (4-84)
VALUE ENGINEERING	FAR 52.248-3	123. Value Engineering- Construction (2-00) (Alt I - 4-84)
DISPUTES	FAR 52.233-1	124. Disputes (7-02) Alt I (12-91)
	FAR 52.233-4	125. Applicable Law for Breach of Contract Claim (10-04)
PROTESTS	FAR 52.233-3	126. Protest after Award (8-96)

Note: The following clauses are incorporated in full text because they contain approved Deviations to Federal Acquisition Regulation (FAR) language; contain information specific to the GSA Greater Southwest Region procurements; or are otherwise unsuitable for incorporation by reference.

127. INSURANCE REQUIREMENTS

In accordance with clause no. 29, FAR 52.228-5, the following kinds and minimum amounts of insurance are required:

1. Worker's Compensation and Employer's Liability:

A. The Contractor is required to comply with applicable Federal and State worker's compensation and occupational disease statutes; however, notwithstanding the permissibility of deductibles under those statutes, worker's compensation shall be obtained without any deductibles. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy. Employer's liability coverage of at least the following limits (and without a deductible) shall be provided,

Bodily Injury by Accident - \$100,000 each accident
Bodily Injury by Disease - \$500,000 policy limit
Bodily Injury by Disease - \$100,000 each employee

except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

B. Even though the laws of a State (such as Texas) might allow a contractor to be a non-subscriber to worker's compensation, contractor is required to carry and maintain worker's compensation insurance (without any deductibles) and employer's liability insurance. If occupational diseases are not covered under the worker's compensation policy, it shall be covered under the employer's liability section of the insurance policy.

Employer's liability insurance coverage shall be as specified in A above.

2. General Liability Insurance:

General liability insurance coverage written on the comprehensive form of policy, is required in the amount of \$500,000.00 per occurrence for bodily injury, and \$50,000 per occurrence for property damage. The deductibles under such policy shall not be greater than (i) \$10,000 per person or \$25,000 per occurrence for bodily injury or (ii) \$10,000 for property damage

3. Automobile Liability Insurance:

A minimum of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage provided for automobile liability insurance coverage written on the comprehensive form of policy, covering the operation of all automobiles used in connection with performing the contract is required. The deductibles under such policy shall not be greater than (i) \$10,000 per person or \$25,000 per occurrence for bodily injury or (ii) \$2,000 for property damage.

128. FAR 52.219-23 NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (JUL 2005) (ALTERNATE II) (OCT 1998) *(Applicable if full and open competitive procurement procedures are used and PEA to be applied as determined by the Department of Commerce. This clause does not apply to small business set-asides or 8(a) procurements.)*

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

"Small disadvantaged business concern" means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR Part 124, subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

"Historically black college or university" means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration

(NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institution" means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k, including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a)).

(b) Evaluation adjustment.

(1) The Contracting Officer will evaluate offers by adding a factor of ten (10) percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment; and

(ii) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution.

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

Offeror elects to waive the adjustment.

(d) Agreements.

(1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

129. FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JUL 2005) (*Applicable if full and open competition procurement procedures are used (e.g., not set-aside) and contract is expected to exceed \$100,000.*)

(a) *Definition.* "HUBZone small business concern," as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

Note to CO: Do not include the following clause if it is not applicable. As prescribed in 19.1204, the CO shall insert the clause at FAR 52.219-25 in solicitations and contracts that consider the extent of participation of SDB concerns in performance of the contract.

130. FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM – DISADVANTAGED STATUS REPORTING (OCT 1999)

- (a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.
- (b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

131. GSAR 52.232-78 PAYMENT INFORMATION (JUL 2000)

The General Services Administration (GSA) makes information on contract payments available electronically at <http://www.finance.gsa.gov>. The Contractor may register at the site and review its record of payments. This site provides information only on payments made by GSA, not by other agencies.