# Design Build Contract for Consolidation Work for the Department of Health and Human Services Consolidation into Mary E. Switzer Building Lower Level and Conference Center

## The Agreement

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# I. Project Information

## I.A. Project Summary

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The Department of Health and Human Services ("HHS") has requested the General Services Administration's ("GSA") assistance in the consolidation of the Office of Human Resources (OHR) from multiple leased locations into the Lower Level of the Mary E. Switzer Building (the "Switzer Building"). In addition, HHS has requested the conversion of office space located on the first floor of the Switzer Building into a conference center that can accommodate 200+ people. These requests have been combined into a single project.

The Switzer Building is located at 330 C Street, SW, Washington, DC. The building comprises eight stories, which is inclusive of a full basement, and a total of 594,152 gross square feet. Approximately 44,000 USF will be affected by this project. The Switzer Building is listed on the National Register of Historic Places and has achieved a Gold LEED New Construction rating as the result of a recently-completed modernization project. More recently, the building occupancy was increased to approximately 1,800 employees after a follow-on consolidation project.

The two-phase modernization project began in 2005 included: 1) the replacement and upgrading of all building systems and interiors, 2) the replacement of the building's original windows with all new windows, 3) the restoration of two of five historic skylights, 4) the conversion of the penthouse into two floors of useable space with two sky-lit atriums, 5) the transformation of the building into a High Performance Green Building, and 6) the repurposing of the building site. The site work involved the transformation of a large surface parking lot into a landscaped plaza and the installation of a vehicle barrier system around the entire perimeter of the property.

The consolidation project began in 2013 and focused on reconfiguring spaces located on floors Lower Level (partial), 1st, 2nd (partial), 3rd, 4th, 5th, 6th, and 7th. The scope of the consolidation project included: 1) architectural, mechanical, and electrical reconfiguration of interior spaces that were originally constructed to meet the needs of another tenant, 2) installation of IT and AV technology for conference rooms, private offices, huddle rooms, and other collaboration spaces, 3) installation of new furniture, fixtures, and equipment to support open office areas, private offices, and meeting spaces, 4) build-out of a new security command center on the Lower Level and installation of ancillary security devices inside and around the building, and 5) build-out of two lobbies to accommodate an increased population of employees.

Now that the 2005 modernization project and the 2013 HHS consolidation projects are complete, the building is occupied and functional. Floors 2-7 are fully occupied and the Lower Level and first floor are partially occupied. The building will remain occupied during this project, including continuous occupation of the Lower Level and first floor.

Work required to construct the first floor conference center and to consolidate OHR into the Lower Level includes, but is not limited to:

A. Conference Center:

i. Selective demolition of historic elements, partitions, doors and hardware, ceilings, flooring, and building systems;
ii. Sustainment of utilities, building services, and building systems affecting and serving adjacent occupied spaces;
iii. Construction of temporary protection needed to allow the unrestricted safe use of the occupied portions of the building, including protection from noise, fumes, odors, dust, and other irritants;
iv. Removal of two existing structural columns within the space and all necessary modifications to the building related to the column removal, including the installation of new columns, beams, and footings within the occupied building;
v. Modification of the roof structure and complete replacement of the roof over the conference center and adjacent spaces as required to meet blast resistance standards;
vi. Construction of interior partitions; doors, frames, and hardware; and finishes (carpet, resilient flooring, paint, ceiling grid and tiles, special finishes, millwork, other specialties, operable partitions, etc.);
vii. Construction of a custom security guard desk, barrier turnstiles, and other security-related features in the historic east lobby;
viii. Construction of ADA/ABBAS-compliant restrooms;
ix. Alterations to building infrastructure and systems (electrical, IT, security, mechanical, fire protection and life safety, etc. as needed to convert the space from office use to assembly);
x. Construction of new HVAC, plumbing, electrical power, lighting, and controls;
xi. Provision of a complete and fully integrated audio-visual system;
xii. Provision of a complete telecommunications / IT cable infrastructure (raceway, cabling, jacks, racks, patch panels, patch cables, wire management, termination, labelling, testing and certification, etc.);
xiii. Provision of a physical and electronic security system, including CCTV cameras, access control systems, and full integration into existing building security systems;
xiv. Provision of all FF&E so as to provide a “turn-key” finished space immediately usable by the tenants.
xv. All coordination of the above with other Government consultants, contractors, and vendors as needed to prepare the space for occupancy and use.

B. Lower Level:

i. Selective demolition of historic elements, partitions, doors and hardware, ceilings, flooring, bathrooms, building systems and the removal and disposal of excess materials stored in the Lower Level;
ii. Sustainment of utilities and building services affecting and serving adjacent occupied spaces;

iii. Construction and furnishing of swing space needed to accommodate building occupants temporarily displaced by construction activities;

iv. Construction of temporary protection needed to allow the unrestricted safe use of the occupied portions of the building, including protection from noise, fumes, odors, dust, and other irritants;

v. Exterior alterations to allow for additional natural light in the Lower Level, entailing the construction of an exterior moat / areaway on the south side of the building to match existing adjacent moats / areaways and the addition of new blast-resistant exterior windows for the Lower Level;

vi. Construction of new perimeter security camera mounting poles and the migration of the CCTV security cameras from the building façade to the new poles, followed by the repair of the building façade at the camera mounting locations;

vii. Construction of interior partitions; doors, frames, and hardware; and finishes (carpet, resilient flooring, paint, ceiling grid and tiles, special finishes, millwork, other specialties, operable partitions, etc.);

viii. Construction of ADA/ABBAS-compliant restrooms;

ix. Alterations to building infrastructure and systems (electrical, IT, security, mechanical, fire protection and life safety, etc.). Much of the Lower Level is configured as storage space. Conversion to office space as a result of this project will entail significant alterations to the building infrastructure and systems;

x. Construction of new HVAC, plumbing, electrical power, lighting, and controls;

xi. Construction of audio-visual and telecommunications / IT cable infrastructure (raceway, cabling, jacks, racks, patch panels, patch cables, wire management, termination, labelling, testing and certification, etc.);

xii. Construction of a physical and electronic security system, including CCTV cameras, access control systems, and full integration into existing building security systems;

xiii. Provision of all coordination, infrastructure, and preparation of the space for FF&E (systems furniture, ancillary furniture, demountable partitions, audiovisual equipment, IT equipment, etc.) to be installed by others. Examples of infrastructure include, but are not limited to, provision of electrical power feeds in locations coordinated with the furniture and AV vendors (circuits, outlets, and base feeds), HVAC, blocking and structural supports in locations coordinated with other vendors, and low-voltage cabling, raceway, jacks, base feeds, faceplates, etc. in locations coordinated with the furniture and AV vendors;

(i) All coordination of the above with other Government consultants, contractors, and vendors as needed to prepare the space for occupancy and use.

The Switzer Building will remain substantially occupied during construction. All floors are occupied, with the second through seventh floors completely occupied. The Lower Level and first floor are partially occupied and will remain partially occupied throughout the duration of the project. The first floor occupants include a childcare facility immediately adjacent to the site of the conference center as well as operating divisions of HHS. The first floor is also the means of ingress and egress for the building which cannot be restricted.

The Lower Level will also remain partially occupied during the project. In addition to office space, the Lower Level includes the building security command center, which is a

24/7 operation; building management and operations space; a fitness center that will remain in operation 24/7 during the initial months of the project; loading dock access, which must remain unimpeded; and mechanical, electrical, and telecom rooms serving the entire building. Lower Level construction will be phased to include temporary swing space for occupants displaced by the conference center construction and an internal move of existing occupants from the west side of the building to the east side. This will require the completion of the new east side space to allow the move, followed by the demolition and construction of the west side space. The fitness center will also remain in operation for part of the project and must remain accessible. Construction of the Lower Level must be phased so as to allow internal moves of occupants within the space. The new building tenants will also have a phased move into the Switzer Building as portions of the Project are completed. The DB contractor must be able to work in a manner that does not disrupt the daily operations of the childcare center, security command center, building operations, and the other building tenants. The DB contractor must also adhere to all Government and building security requirements. All phased work and hours of operation must be closely coordinated with GSA and other Project stakeholders.

The Project, the general phasing of which shall be determined by the Government, shall begin immediately after the notice to proceed is issued by the contracting officer, and substantial completion shall be 550 calendar days and contract completion shall be 610 days. The Offerors that are invited to participate in the Phase II RFP will be required to provide a schedule and pricing for the completion of the project under this time constraint.

This project is for the design and construction of the lower level and conference center of the Mary E. Switzer Building.

### I.B. The Contract

(1) The Contract consists of the SF 1442, the Agreement, the Statement of Work, Specifications, Drawings, Exhibits, Amendments, Modifications, and other Attachments identified herein (collectively, the Contract Documents). The Contract contains the entire agreement of the Parties, and no prior written or oral agreement, express or implied, shall be admissible to contradict or modify any part of the Contract.

(2) The Contractor shall provide and pay for all design, labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution of the work described in and reasonably inferable from the Contract Documents (the Work), whether temporary or permanent. In consideration for, and upon condition of, the Contractor's completion of the Work, GSA shall pay the Contractor the price or prices established in Section II, subject to the terms and conditions set forth in this Contract.

### I.C. Period of Performance

(1) *Commencement.* The Contractor shall commence performance of the Work within 10 days after the Contractor receives the Notice to Proceed (NTP).

(2) *Substantial Completion.* The Contractor shall achieve Substantial Completion of the Work, as that term is defined in this Agreement, no later than 550 calendar days from issuance of Notice to Proceed (NTP).

(3) *Contract Completion.* The Contractor shall achieve Contract Completion, as the term is defined in this Agreement, within 610 calendar days of Substantial Completion.

### I.D. Work Conditions/Site Requirements

To be noted in Phase II – RFP.

### I.E. Authorized Representative

(1) This Contract is between the United States of America, acting by and through the Administrator of General Services (GSA), and the Contractor (the Parties). References in this Contract to "the Owner" or "the Government" shall be understood to refer to GSA. The following individual is designated as the only authorized GSA representative under this Contract, unless other warranted contracting officers are designated in writing:

Contracting Officer
Name: Mary Pineda
Address: 301 7th Street SW Washington, DC 20407
Telephone: 202-205-8468
Email: Mary.Pineda@gsa.gov

(2) GSAR 552.236-71, Authorities and Limitations, is incorporated by reference in this Contract.

### I.F. Liquidated Damages Rate

In accordance with the “Liquidated Damages” clause in Section III (Terms and Conditions), liquidated damages shall be calculated at the rate of $ (to be noted in RFP) per calendar day.

### I.G. Buy American Exceptions

For the applicable Buy American clause and any exceptions, see Section IV of this Agreement.

### I.H. Statement of Work, Specifications, Drawings, Exhibits, and Other Attachments

The following documents are incorporated by reference into this Contract.

(1) Statement of Work for Contract No. GS-11P-16-MKC-7010, Dated X

(2) Specifications for Contract No. GS-11P-16-MKC-7010

(3) Design Intent Drawings for Contract No. GS-11P-16-MKC-7010

(4) Site Conditions Report

(5) Wage Determination

(6) Small Business Subcontracting Plan

## II. Prices

### II.A. Basis of Pricing

(1) *Contract Prices*. All Contract prices set forth in this Section include all costs necessary to complete the work for which the price is established (e.g., Base Contract, Unit Price, Options) in accordance with the Contract Documents, including, but not limited to, the cost of work performed by subcontractors and consultants, indirect costs, fees, expenses, taxes, and profit.

(2) *Knowledge of Conditions Affecting Price*. FAR 52.236-3, Site Investigations and Conditions Affecting the Work, is incorporated by reference in this Contract. The Contractor shall be presumed to have established all prices with knowledge of general and local conditions that may affect the cost of Contract performance at the site where the Work is to be performed, to the extent that such information is reasonably obtainable.

(3) *Unit Prices and Allowances*. If any portion of the Work is to be performed on a unit price basis, the Unit Price shall include all costs of coordinating and incorporating the unit-priced portion of the Work into the Base Contract Work. The Contractor shall only be obligated to perform unit-priced work to the extent that an Allowance has been established. The Contractor shall be obligated to perform such work in excess of a unit quantity for which an Allowance is established only if directed by the Contracting Officer in writing. The Contractor shall be bound to the unit price or prices set forth herein in all equitable adjustments for changes including unit priced work, and no markups shall be applied to such unit prices.

(4) *Options*. If any portion of the Work is to be performed upon the timely exercise of an Option, the Option Price shall include all costs of coordinating and incorporating the Option-priced portion of the Work into the Base Contract Work. An adjustment to the Contract price for such additional work shall be computed solely on the basis of the Option price or prices set forth herein. Unless otherwise specified, all options may be exercised within 90 days of Contract award.

(5) *Bid Rates*. If this Contract includes Bid Rates to be used in determination of equitable adjustments (e.g., overhead, profit, daily rates for time-related costs), such rates shall be deemed to include all costs recoverable as components of an equitable adjustment consistent with the requirements, definitions, and exclusions applicable to equitable adjustments set forth in this Contract, and consistent with the Contractor's cost accounting practices. Unless otherwise specified, the bid rates shall be deemed to include only the Contractor's costs, and not the costs of any subcontractors.

### II.B. Contract Price Form

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| CLIN | ITEM | PRICE |
|---|---|---|
| 1 | Base Contract – Complete A/E design of Mary E. Switzer Building HHS Lower Level Consolidation and Conference Center including DBC A/E services during Construction and Post-Construction Phases | $ |
| 2 | Base Contract – Construction of Mary E. Switzer Building HHS Lower Level Consolidation and Conference Center | $ |
| 3 | Base Contract Offer (= 1+2) | $ |

| CLIN | ITEM | PRICE |
|---|---|---|
| | | |
| 4 | OPTION NO. 1: “Skyfold” partition in the Conference Center in lieu of horizontally-folding operable partition. | $ |
| 5 | OPTION NO. 2: New window well and blast-resistant lower level exterior windows on the south side of the building. | $ |
| 6 | OPTION NO. 3: Additional ADA/ABAAS bathrooms for the Conference Center in lieu of the two breakout rooms. Two rooms are to be provided, each with a minimum of four (4) toilet fixtures and three (3) lavatories. Finishes to match new toilet rooms on the Lower Level. Provide a corridor adjacent to the large conference room connecting the north and south conference center entrances, with the entrance to each bathroom to be located along this corridor. | $ |
| 7 | OPTION NO. 4: Change “G” identification in all elevators and associated equipment and systems to “LL”. To include, but not limited to:<br>a. elevator cab position indicators;<br>b. elevator cab floor selector buttons and car operating panels;<br>c. elevator cab voice annunciators (change recording from “garage” to “lower level”);<br>d. elevator lobby position indicators;<br>e. Fire Command Center elevator position indicator;<br>f. All affected fire alarm and life safety devices and documentation. | $ |
| 8 | OPTION NO. 5: Photoluminescent stairway marking / materials in all building stairwells from top of stair to bottom in accordance with GSA-PBS P100 requirements. | |
| 9 | OPTION NO. 6: Exposed skylight in the North Lounge. | |
| 10 | OPTION NO. 7: Refurbish two (2) historic illuminated sign fixtures located in the first floor headhouse corridor. | |
| 11 | Total Contract Offer (= 3 + 4 + 5 + 6 + 7 + 8 + 9 + 10) | |

OPTIONAL BID RATES

| | | |
|---|---|---|
| 12 | Contractor's Overhead Rate for Adjustments | % |
| 13 | Contractor's Profit Rate for Adjustments | % |
| 14 | Contractor's Daily Rate for Compensable Project Delay (Work Day) | $ |

# III. Terms and Conditions

### III.A. Commencement, Prosecution, and Completion of Work

FAR 52-211-10, Commencement, Prosecution, and Completion of Work, is supplemented as follows:

The Contractor shall not commence the Work until the Contracting Officer has issued NTP. The Contractor shall diligently prosecute the Work so as to achieve Substantial Completion of the Work, as defined in Section III (Terms and Conditions), “Substantial Completion and Contract Completion” clause, within the time specified in Section I (Project Information), “Period of Performance” clause. If the Contract specifies different completion dates for different phases or portions of the Work, the Contractor shall diligently prosecute the Work so as to achieve Substantial Completion of such phases or portions of the Work within the times specified.

### III.B. Contractor Responsibilities

(1) For the purposes of FAR 52.236-1, Performance of Work by the Contractor, the Contractor shall perform at least ten percent of the Work.

(2) Unless otherwise expressly stated in the Contract, the Contractor shall be responsible for all means and methods employed in the performance of the Contract.

(3) The Contractor shall be responsible for providing professional design services unless this responsibility is expressly excluded from the Contract. In the performance of such work, the Contractor shall be responsible for retaining licensed design professionals, who shall sign and seal all drawings, calculations, specifications and other submittals that the licensed professional prepares. The Contractor shall be responsible for, and GSA shall be entitled to rely upon, the adequacy and completeness of all professional design services provided under this Contract.

(4) This Contract is intended for the sole benefit of the Parties; no person shall be deemed a third party beneficiary of this Contract. Notwithstanding the foregoing, the Contractor shall include in all subcontracts that require professional design services express terms establishing GSA as a third party beneficiary.

(5) The Contractor shall be responsible for coordinating all activities of subcontractors. This responsibility includes coordination of: preparation of shop drawings produced by different subcontractors where their work interfaces or may potentially conflict or interfere, and the installation of such work; scheduling of work by subcontractors; and use of the Project site for staging and logistics.

(6) The Contractor shall determine whether the information contained in the Contract Documents complies with applicable laws, statutes, building codes and regulations. If it comes to the attention of the Contractor that any of the Contract Documents do not comply with such requirements, the Contractor shall promptly notify the Contracting Officer in writing. If the Contractor performs any of the Work prior to notifying and receiving direction from the Contracting Officer, the Contractor shall assume full responsibility for correction of such work, and any fees or penalties that may be assessed for non-compliance.

(7) The Contractor shall immediately bring to the Contracting Officer's attention any hazardous materials or conditions not disclosed in the Contract Documents discovered by or made known to the Contractor during the performance of the Contract.

(8) In accordance with FAR 52.236-13, Accident Prevention ALT I, the Contractor is responsible for safety on the Project site and must submit a safety plan before commencing work.

(9) The Contractor's responsibilities include the Responsibilities of the Architect Engineer Contractor, as specified in FAR 52.236-23.

### III.C. Contractor Management and Personnel

FAR 52.236-6, Superintendence by the Contractor, is supplemented as follows:

(1) The Contractor shall employ sufficient management and contract administration resources, including personnel responsible for project management, field superintendence, change order administration, estimating, coordination, inspection, and quality control, to ensure the proper execution and timely completion of the Work. The Contractor shall designate a principal of the firm or other senior management official to provide executive oversight and problem resolution resources to the Project for the life of the Contract.

(2) The Contractor shall employ, and require its subcontractors to employ, qualified personnel to perform the Work. The Government reserves the right to exclude, or remove from the site or building, any personnel for reasons of incompetence, carelessness, or insubordination, who violate rules and regulations concerning conduct on federal property, or whose continued employment on the site is otherwise deemed by the Government to be contrary to the public interest.

(3) Repeated failure or excessive delay by the Contractor to provide qualified personnel shall be deemed a default for the purposes of the Termination for Default clause.

### III.D. Project Schedule

(1) The Contractor shall use a Critical Path Method ("CPM") Project Schedule to plan, coordinate, and perform the Work. The Project Schedule shall be produced using widely used, commercially available computer software that is capable of generating and monitoring a CPM schedule and is compatible with Meridian Proliance.® For example, compatible software includes Microsoft Project,® Primavera SureTrak,® and Primavera Project Planner.®

(2) The Project Schedule shall be a rational, reasonable and realistic plan for completing the Work, and conform to requirements specified in this clause and elsewhere in this Contract.

(3) The Contractor understands and acknowledges that the preparation and proper management of the Project Schedule is a material component of the Work, and that the Contract price includes all costs of compliance with Project Schedule requirements.

(4) Within thirty (30) days of NTP, or such other time as may be specified herein, the Contractor shall submit its Project Schedule to the Contracting Officer, together with a written narrative describing the major design and construction activities.

The Project Schedule may indicate construction activities in summary form prior to completion of final design documents. The Contractor shall submit the Project Schedule in both electronic and hardcopy print format.

(5) Within thirty (30) days of completion of final design documents, the Contractor shall submit to the Contracting Officer a revised Project Schedule depicting all activities necessary to complete construction work activities, together with a written narrative describing the major work activities, activities on the critical path, and major constraints underlying the sequence and logic of the Project Schedule. The Contractor shall submit the revised Project Schedule in both electronic and hardcopy print format.

(6) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the Work, effective evaluation of the reasonableness and realism of the Project Schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.

(7) The Contractor may revise the Project Schedule as it deems appropriate, but shall only revise prospective activities, durations and logic.

(8) Unless a shorter period for updates is specified elsewhere, the Contractor shall update the Project Schedule monthly to reflect its actual progress in completing the Work, and submit the updated Project Schedule to the Contracting Officer within five working days of the end of each month or other specified period.

(9) If at any time the Contracting Officer finds that the Project Schedule does not comply with any Contract requirement, the Contractor shall, upon written notice of exceptions taken by the Contracting Officer, revise the Project Schedule, adjust activity progress, or provide sufficient information demonstrating compliance. Regardless of whether the Contracting Officer takes any such exception, the Contractor shall not be relieved of its responsibility for the rationality, reasonableness or realism of the Project Schedule, or its responsibility to achieve Substantial Completion within the time specified by this Contract.

(10) If the Contractor fails to sufficiently address the Contracting Officer's exceptions to the Project Schedule within thirty (30) calendar days of written notice of same, the Contracting Officer may withhold retainage until the Project is Substantially Complete, or until such time as the Contractor has complied with Project Schedule requirements.

(11) The Contracting Officer shall be entitled, but not required, to rely upon the Project Schedule to evaluate the Contractor's progress, evaluate entitlement to extensions of time, and determine the criticality or float of any activities described in such Project Schedule.

### III.E. Extensions of Time

FAR 52.211-13, Time Extensions, is supplemented as follows:

(1) If the Contractor requests an extension of the time for Substantial Completion, the Contractor shall base its request on analysis of time impact using the Project Schedule as its baseline, and shall propose as a new Substantial Completion date to account for the impact.

The Contractor shall submit a written request to the Contracting Officer setting forth facts and analysis in sufficient detail to enable the Contracting Officer to evaluate the Contractor's entitlement to an extension of time.

(2) The Contractor shall only be entitled to an extension of time to the extent that (a) Substantial Completion of the Work is delayed by causes for which the Contractor is not responsible under this Contract, and (b) the actual or projected Substantial Completion date is later than the date required by this Contract for Substantial Completion.

(3) The Contractor shall not be entitled to an extension of time if the Contractor has not updated the Project Schedule in accordance with this Contract.

(4) The Government shall not be liable for any costs to mitigate time impacts incurred by the Contractor that occur less than 30 calendar days after the date the Contractor submits a request for extension of time in compliance with this clause.

### III.F. Interpretation of Specifications and Drawings

FAR 52.236-21, Specifications and Drawings for Construction, and GSAR 552.236-77 Specifications and Drawings are supplemented as follows:

(1) For the purposes of FAR 52.236-21, GSAR 552.236-77 and this clause, specifications and drawings refer only to those included among the Contract Documents, and not to those produced by the Contractor pursuant to its responsibilities under this Contract.

(2) Different requirements within the Contract Documents shall be deemed inconsistent only if compliance with both cannot be achieved.

### III.G. Submittals

(1) The Contractor shall prepare and submit to the Contracting Officer design documents, shop drawings, samples, calculations, product information, mockups, and other submittals (collectively, "submittals") as specified in the Contract Documents.

(2) The Contractor shall submit design documents for review in accordance with PBS-P100. GSA shall review submittals for the limited purpose of verifying that the documents conform to the design criteria expressed in the Contract Documents.

(3) The Contractor shall not proceed with work or procure products or materials described or shown in submittals until the Contracting Officer has indicated approval of the submittal. Any work or activity undertaken prior to approval shall be at the Contractor’s risk; should the Contracting Officer subsequently determine that the work or activity does not comply with the Contract, the Contractor shall be responsible for all cost and time required to comply with the Contracting Officer's determination. The Contracting Officer shall have the right to order the Contractor to cease execution of work for which submittals have not been approved. The Government shall not be liable for any cost or delay incurred by the Contractor attributable to the proper exercise of this right.

(4) The Contractor shall direct to the Contracting Officer’s attention, in writing, all deviations or changes in resubmitted submittals. In the absence of such written notice, the Contracting Officer’s approval of a resubmission shall not include or apply to such deviations or changes.

### III.H. Substantial Completion and Contract Completion

FAR 52.211-10, Commencement, Prosecution, and Completion of Work, FAR 52.211-12, Liquidated Damages (Construction), and GSAR 552.246-72, Final Inspection and Tests, are supplemented as follows:

(1) For the purposes of FAR 52.211-10, Commencement, Prosecution and Completion of Work, and FAR 52.211-12, Liquidated Damages (Construction), the Work shall be deemed complete when it is “Substantially Complete.” The Work shall be deemed "Substantially Complete" if and only if the Contractor has completed the Work and related Contract obligations in accordance with the Contract Documents, such that the Government may enjoy the intended access, occupancy, possession, and use of the entire Work without impairment due to incomplete or deficient work, and without interference from the Contractor's completion of remaining work or correction of deficiencies in completed work. In no event shall the Work be deemed Substantially Complete if all fire and life safety systems are not tested and accepted by the Authority Having Jurisdiction, where such acceptance is required under the Contract.

(2) With reasonable advance notice, the Contractor shall submit to the Contracting Officer a written proposal recommending a Substantial Completion date (Notice of Substantial Completion). The Contracting Officer shall conduct inspections and make a determination of Substantial Completion within a reasonable time. If the Contracting Officer takes exception to the Notice of Substantial Completion, the Contractor shall be entitled to a written notice of conditions precluding determination of Substantial Completion.

(3) The Contractor shall only be entitled to an extension of time to address such conditions if, and to the extent that, the Contracting Officer provides notice of such conditions more than thirty (30) calendar days after receipt of the Notice of Substantial Completion.

(4) Substantial Completion shall be established by the Contracting Officer's issuance of a written determination specifying the date upon which the Work is Substantially Complete.

(5) The Contract is complete (Contract Completion) if and only if the Contractor has completed all Work and related Contract obligations, corrected all deficiencies and all punch list items, and complied with all conditions for final payment.

(6) Unless otherwise specifically noted, or otherwise clear from context, all references in this Contract to "acceptance" shall refer to issuance of a written determination of Substantial Completion.

(7) The Contractor shall not be entitled to final payment or release of any retainage held by the Government until after Contract Completion. If the Contractor does not achieve Contract Completion within the time required by this Contract, the Government shall be entitled, after providing notice to the Contractor, to complete any work remaining unfinished. The Contractor shall be liable to the Government for all costs incurred by the Government to complete such work.

### III.I. Use and Possession Prior to Substantial Completion

FAR 52.236-11, Use and Possession Prior to Completion, is supplemented as follows:

Exercise by the Government of the right conferred by FAR 52.236-11 shall not relieve the Contractor of responsibility for completing any unfinished components of the Work.

### III.J. Finality of Contract Modifications

As set forth elsewhere in this Contract, the Contractor is entitled to additional consideration under certain conditions, including the issuance of change orders. It is the Contractor's duty to include in proposals for equitable adjustment or other consideration all compensation to which it may be entitled, including cost and time. Unless otherwise explicitly stated in a modification to the Contract providing such consideration, adjustments to the Contract price or time agreed upon therein shall be deemed to provide all compensation to which the Contractor is entitled, and shall constitute final settlement of the Contractor's entitlement to compensation on account of the change or other condition giving rise to the modification.

### III.K. Liquidated Damages

FAR 52.211-12, Liquidated Damages, is supplemented as follows:

(1) The Contractor acknowledges that time is of the essence for the performance of the Work, and that determining actual damages from delay would be extremely difficult and impractical. If the Contractor fails to achieve Substantial Completion of the Work within the time specified in this Contract, the Contractor shall be liable to the Government for liquidated damages at the rate specified in Section I (Project Information), paragraph entitled, "*Liquidated Damages Rate,*" for each calendar day following the required completion date that the Work is not Substantially Complete.

(2) If the Contract requires different completion dates for different phases or portions of the Work, the Contractor shall be liable for liquidated damages at the specified rate for each calendar day following the required completion date that the phase or portion of Work is not Substantially Complete. If a single rate is specified, the specified rate shall be apportioned between the different phases or portions of the Work.

(3) If the Government elects to accept any portion of the Work not specifically designated as a phase or portion of Work with its own required completion date, the liquidated damage rate shall be apportioned between accepted work and uncompleted work, and the Contractor's liability for liquidated damages shall be computed accordingly.

### III.L. Insurance Requirements

(1) The Contractor shall obtain and maintain for the entire life of the Contract, in addition to any insurance required by law, the following minimum kinds and amounts of insurance required pursuant to FAR clause 52.228-5, Insurance – Work on a Government Installation, and GSAR 552.228-5, Government as Additional Insured.

(a) Workers' compensation insurance in the amount required by the jurisdiction in which the Contract is performed. The Contractor shall obtain Employers' liability coverage of at least $2,000,000. If occupational diseases are not covered by workers' compensation insurance, Employers' liability coverage shall include occupational diseases.

(b) Broad form comprehensive commercial general liability insurance in the amount of at least $5,000,000 per occurrence. Such insurance shall include, but not be limited to, contractual liability, bodily injury and property damage.

(c) Comprehensive automobile liability covering the operation of all automobiles used in connection with performing the Contract in the amount of at least $1,000,000 per person and $2,500,000 per occurrence for bodily injury and $1,000,000 per occurrence for property damage.

(2) The Contractor shall require that the licensed design professionals it retains for the Project acquire and maintain professional liability insurance in the amount of $5,000,000 per claim and shall provide proof to the Contracting Officer.

(3) The Contractor shall promptly provide to the Contracting Officer proof that it has obtained insurance required by the Contract in the form of certificates of insurance. The Contractor shall submit to the Contracting Officer all renewal certificates issued during the life of this Contract immediately upon issuance.

### III.M. Order of Precedence

Different requirements within this Contract shall be deemed inconsistent only if compliance with both cannot be achieved. In case of inconsistency between Contract Documents, the following order of precedence shall apply:

(1) Section IV of the Agreement

(2) Sections I, II, and III of the Agreement

(3) The Statement of Work

(4) The Specifications

(5) The Drawings

(6) Exhibits and Other Attachments

### III.N. Administrative Matters

(1) *Project Meetings*. The Contractor shall attend a preconstruction conference and shall participate in regularly scheduled Project meetings.

(2) *Schedule of Values*. The Contractor shall prepare and submit for approval a detailed cost breakdown of the Contract price, to be referred to as the Schedule of Values, assigning values to each component of the Work. Values must include all direct and indirect costs, although a separate value for bond costs may be established. The Schedule of Values must contain sufficient detail to enable the Contracting Officer to evaluate applications for payment. If this Contract requires that the Project Schedule be cost loaded, the Schedule of Values will be derived from the Project Schedule.

(3) *Payments*. FAR clause 52.232-5, Payments under Fixed-Price Construction Contracts, is supplemented as follows:

(a) Before submitting a request for payment, the Contractor shall attend pre-invoice payment meetings each month, as scheduled, with the designated Government representative for the purpose of facilitating review and approval of payment requests. Payment meetings may be conducted in person or by telephone. The Contractor shall provide documentation to support the prospective payment request.

(b) The Contractor shall submit its invoices to the Contracting Officer. Separate payment requests shall be submitted for progress payments, payments of retainage, and partial or final payments.

(c) If the invoice does not meet the requirements of FAR Clause 52.232-27 (a)(2) and the requirements specified in Sub-paragraphs (3)(a),(d),(e),and(f) of the Administrative Matters clause, the Contracting Officer may return the invoice to the Contractor without payment for

correction. If the Contracting Officer disputes the requested payment amount, the Government may pay the portion of the requested payment that is undisputed.

(d) Invoices shall be submitted in an original and two (2) copies to the designated billing office specified in this Contract or in individual delivery/work orders.

(e) Invoices must include the Account Document Number (ADN) assigned at award.

(f) The Contractor shall submit the following information or documentation with each invoice:

(i) GSA Form 184A and/or 184B - Construction Progress Report (Construction Phases Only) or AIA Form G702, including the updated Schedule of Values upon which the payment request is based;

(ii) GSA Form 2419 - Certification of Progress Payments Under Fixed-Price Construction Contract;

(iii) The payment terms that apply for the particular services rendered;

(iv) Additional documentation:

**N/A**

(g) GSA will not be obligated to issue final payment unless the Contractor has furnished to the Contracting Officer a release of claims against the Government relating to this Contract, and submitted all required product warranties, as-built drawings, operating manuals, and other items as specified in the Contract. The Contractor may reserve from the release specific claims only if such claims are explicitly identified with stated claim amounts. All release forms must bear the original signature of the signer and must be affixed with the Contractor's corporate seal or the seal of a Notary Public.

(4) *Prompt Payment*. In accordance with FAR clause 52.232-27, the period for payments is as follows:

(a) Progress Payments: 14 days

(b) Subsequent Subcontractor Payments: 7 days

(5) *Payment Information.* 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.

(6) *Security Clearances.* Contractor shall comply with the following requirements pertaining to security clearances:

(a) All personnel performing work under the Contract on the Project site must obtain an Enter on Duty (EOD) determination before they will be granted access to the site.

(b) To obtain an EOD determination, Contractor shall submit for all such personnel fingerprints on Form SF87 and a completed Contractor Information Worksheet (CIW). Detailed information is available at http://www.gsa.gov/portal/category/107203. USAccess Credentialing Centers can be located at http://www.fedidcard.gov/centerlist.aspx .

(c) In addition, all such personnel who will be on site 6 months or longer must apply for and receive clearance in accordance with Homeland Security Presidential Directive 12 (HSPD-12). See Section IV, *Contract Clauses*, GSAR 552.204-9.

(7) *Safeguarding and Dissemination of Sensitive But Unclassified (SBU) Building Information.* This clause applies to all recipients of SBU building information, including offerors, bidders, awardees, contractors, subcontractors, lessors, suppliers and manufacturers.

(a) Marking SBU. Contractor-generated documents that contain building information must be reviewed by GSA to identify any SBU content, before the original or any copies are disseminated to any other parties. If SBU content is identified, the Contracting Officer (CO) may direct the contractor, as specified elsewhere in this contract, to imprint or affix SBU document markings to the original documents and all copies, before any dissemination.

(b) Authorized recipients.

(i) Building information designated SBU must be protected with access strictly controlled and limited to those individuals having a legitimate business need to know such information. Those with a need to know may include Federal, State and local government entities, and nongovernment entities engaged in the conduct of business on behalf of or with GSA. Nongovernment entities may include architects, engineers, consultants, contractors, subcontractors, suppliers, utilities, and others submitting an offer or bid to GSA, or performing work under a GSA contract or subcontract. Recipient contractors must be registered as “active” in the System for Award Management (SAM) database at www.sam.gov and have a legitimate business need to know such information. If a subcontractor is not registered in the SAM and has a need to possess SBU building information, the subcontractor shall provide to the contractor its DUNS number or its tax ID number and a copy of its business license. The contractor shall keep this information related to the subcontractor for the duration of the contract and subcontract.

(ii) All GSA personnel and Contractors must be provided SBU building information when needed for the performance of official Federal, State, and local government functions, such as for code compliance reviews and for the issuance of building permits. Public safety entities such as fire and utility departments may require access to SBU building information on a need to know basis. This clause must not prevent or encumber the dissemination of SBU building information to public safety entities.

c. Dissemination of SBU building information:

(i) By electronic transmission. Electronic transmission of SBU information outside of the GSA network must use session encryption (or alternatively, file encryption). Encryption must be via an approved NIST algorithm with a valid certification, such as Advanced Encryption Standard (AES) or Triple Data Encryption Standard (3DES), in accordance with Federal Information Processing Standards Publication (FIPS PUB) 140-2, Security Requirements for Cryptographic Modules per GSA policy.

(ii) By nonelectronic form or on portable electronic data storage devices. Portable electronic data storage devices include, but are not limited to CDs, DVDs, and USB drives. Nonelectronic forms of SBU building information include paper documents, among other formats.

1) By mail. Contractors must utilize only methods of shipping that provide services for monitoring receipt such as track and confirm, proof of delivery, signature confirmation, or return receipt.

2) In person. Contractors must provide SBU building information only to authorized recipients with a need to know such information. Further information on authorized recipients is found in Section 2 of this clause.

d. Record keeping. Contractors must maintain a list of all entities to which SBU is disseminated, in accordance with sections 2 and 3 of this clause.

This list must include at a minimum: (1) the name of the State, Federal, or local government entity, utility, or firm to which SBU has been disseminated; (2) the name of the individual at the entity or firm who is responsible for protecting the SBU building information, with access strictly controlled and limited to those individuals having a legitimate business need to know such information; (3) contact information for the named individual; and (4) a description of the SBU building information provided. Once “as built” drawings are submitted, the contractor must collect all lists maintained in accordance with this clause, including those maintained by any subcontractors and/or suppliers, and submit them to the CO. For Federal buildings, final payment may be withheld until the lists are received.

e. Safeguarding SBU documents. SBU building information (both electronic and paper formats) must be protected, with access strictly controlled and limited to those individuals having a legitimate business need to know such information. GSA contractors and subcontractors must not take SBU building information outside of GSA or their own facilities or network, except as necessary for the performance of that contract. Access to the information must be limited to those with a legitimate business need to know.

f. Destroying SBU building information. When no longer needed, SBU building information must be destroyed so that marked information is rendered unreadable and incapable of being restored, in accordance with guidelines provided for media sanitization within GSA CIO IT Security 06-32, Media Sanitization Guide and Appendix A of NIST Special Publication 800-88, Guidelines for Media Sanitization. Alternatively, SBU building information may be returned to the CO.

g. Notice of disposal. The contractor must notify the CO that all SBU building information has been returned or destroyed by the contractor and its subcontractors or suppliers in accordance with paragraphs 4 and 6 of this clause, with the exception of the contractor's record copy. This notice must be submitted to the CO at the completion of the contract to receive final payment. For leases, this notice must be submitted to the CO at the completion of the lease term. The contractor may return the SBU documents to the CO rather than destroying them.

h. Incidents. All improper disclosures of SBU building information must be immediately reported to the CO at <insert address and contact information> . If the contract provides for progress payments, the CO may withhold approval of progress payments until the contractor provides a corrective action plan explaining how the contractor will prevent future improper disclosures of SBU building information. Progress payments may also be withheld for failure to comply with any provision in this clause until the contractor provides a corrective action plan explaining how the contractor will rectify any noncompliance and comply with the clause in the future.

i. Subcontracts. The contractor and subcontractors must insert the substance of this clause in all subcontracts.

## III.O. Non-Compliance with Contract Requirements

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this Contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the Contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of Contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

### III.P. Safeguarding Sensitive Data and Information Technology Resources

In accordance with FAR 39.105, this section is included in the contract. This section applies to all users of sensitive data and information technology (IT) resources, including awardees, contractors, subcontractors, lessors, suppliers and manufacturers. The following GSA policies must be followed. These policies can be found at http://www.gsa.gov/directives.

1. CIO P 2100.1 GSA Information Technology (IT) Security Policy
2. CIO P 2100.2B GSA Wireless Local Area Network (LAN) Security
3. CIO 2100.3B Mandatory Information Technology (IT) Security Training Requirement for Agency and Contractor Employees with Significant Security Responsibilities
4. CIO 2104.1A GSA Information Technology IT General Rules of Behavior
5. CIO 2105.1 B GSA Section 508: Managing Electronic and Information Technology for Individuals with Disabilities
6. CIO 2106.1 GSA Social Media Policy
7. CIO 2107.1 Implementation of the Online Resource Reservation Software
8. CIO 2160.4 Provisioning of Information Technology (IT) Devices
9. CIO 2162.1 Digital Signatures
10. CIO P 2165.2 GSA Telecommunications Policy
11. CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information (PII)
12. CIO 2182.2 Mandatory Use of Personal Identity Verification (PIV) Credentials
13. CIO P 1878.2A Conducting Privacy Impact Assessments (PIAs) in GSA
14. CIO IL-13-01 Mobile Devices and Applications
15. CIO IL-14-03 Information Technology (IT) Integration Policy
16. HCO 9297.1 GSA Data Release Policy
17. HCO 9297.2B GSA Information Breach Notification Policy
18. ADM P 9732.1 D Suitability and Personnel Security

The contractor and subcontractors must insert the substance of this section in all subcontracts.

### III.Q. Options and Allowances

## IV. Contract Clauses

**IV.A. Clauses Incorporated In Full Text**

(1) FAR 52.222-99 Establishing a Minimum Wage for Contractor (JUL 2014) (DEVIATION)

This clause implements Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and OMB Policy Memorandum M-14-09, Implementation of the President's Executive Order Establishing a Minimum Wage for Contractors, dated June 12, 2014.

(a) Each service employee, laborer, or mechanic employed in the United States (the 50 states and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be $10.10 per hour.

(b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage.

Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(c) The Contracting Officer will adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The contracting Officer shall consider documentation as to the specific costs and workers impacted in determining the amount of the adjustment.

(d) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in all subcontracts.

(2) FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (SEPT 2013)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.biopreferred.gov.

(c) In the performance of this contract, the Contractor shall—

(1) Report to http://www.sam.gov, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

(3) FAR 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 08)

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

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this Contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to the Contracting Officer.

(4) GSAR 552.204-9 Personal Identity Verification Requirements (OCT 2012)

(a) The contractor shall comply with GSA personal identity verification requirements, identified at http://www.gsa.gov/hspd12, if contractor employees require access to GSA controlled facilities or information systems to perform contract requirements.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have access to a GSA-controlled facility or access to a GSA-controlled information system.

(5) GSAR 552.252-6 Authorized Deviations in Clauses (Deviation FAR 52.252-6) (SEP 99)

(a) Deviations to FAR clauses.

(1) This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) clause by the addition of "(DEVIATION)" after the date of the clause, if the clause 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) clause that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR clause no.))" after the date of the clause.

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

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

(6) Buy American Requirements

**52.225-11 Buy American Act—Construction Materials under Trade Agreements.**

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (AUG 2009)

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

"Caribbean Basin country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

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

"Cost of components" means—

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

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

"Designated country" means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country 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.

"Free Trade Agreement country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

"Least developed country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

"WTO GPA country construction material" means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(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)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated county construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

_____

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

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) 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 restrictions 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)(4) 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)(4)(i) of this clause.

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

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

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

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

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

[*Include other applicable supporting information*.]

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

(End of clause)

(7) Additional Clauses

**N/A**

**FAR 52.223-21, FOAMS (Jun 2016)**

**IV.B. Clauses Incorporated by Reference**

The following FAR/GSAR clauses are supplemented in Section III, Terms and Conditions: 52.211-10, 52.211-12, 52.211-13, 52.228-5, 52.232-5, 52.232-27, 52.236-1, 52.236-6, 52.236-11, 52.236-13, 52.236-23, 52.236-21, 552.236-77, 552.236-78, and 552.246-72.

(1) FAR 52.252-2 Clauses Incorporated by Reference (Feb 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. The full text of a clause may also be accessed electronically at this address:

http://www.acquisition.gov/comp/far/index.html

(2) Federal Acquisition Regulation (FAR) Clauses:

| NUMBER | TITLE | DATE |
|---|---|---|
| 52.202-1 | Definitions | NOV 13 |
| 52.203-3 | Gratuities | APR 84 |
| 52.203-5 | Covenant Against Contingent Fees | MAY 14 |
| 52.203-6 | Restrictions on Subcontractor Sales to the Government | SEP 06 |
| 52.203-7 | Anti-Kickback Procedures | MAY 14 |
| 52.203-8 | Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity | MAY 14 |
| 52.203-10 | Price or Fee Adjustment for Illegal or Improper Activity | MAY 14 |
| 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions | OCT 10 |
| 52.203-13 | Contractor Code of Business Ethics and Conduct (If Contract is Greater than $5 Million or Performance Period is Greater than 120 Days) | APR 10 |
| 52.203-14 | Display of Hotline Poster(s) (If Contract is Greater than $5 Million) | DEC 07 |
| 52.203-17 | Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights | APR 14 |
| 52.204-2 | Security Requirements | AUG 96 |

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|---|---|---|
| 52.204-4 | Printed or Copied Double-Sided on Postconsumer Fiber Content Paper | MAY 11 |
| 52.204-7 | System for Award Management | JUL 13 |
| 52.204-9 | Personal Identity Verification of Contractor Personnel | JAN 11 |
| 52.204-10 | Reporting Executive Compensation and First Tier Subcontract Awards | JUL 13 |
| 52.204-13 | System for Award Management Maintenance | JUL 13 |
| 52.204-14 | Service Contract Reporting Requirements (Applies to contracts estimated value of $500,000 or greater) | JAN 14 |
| 52.204-18 | Commercial and Government Entity Code Maintenance | NOV 14 |
| 52.204-19 | Incorporation by Reference of Representations and Certifications | DEC 14 |
| 52.209-6 | Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment | AUG 13 |
| 52.209-9 | Updates of Publicly Available Information Regarding Responsibility Matters | JUL 13 |
| 52.209-10 | Prohibition on Contracting with Inverted Domestic Corporations | DEC 14 |
| 52.211-10 | Commencement, Prosecution, and Completion of Work | APR 84 |
| 52.211-12 | Liquidated Damages—Construction | SEP 00 |
| 52.211-13 | Time Extensions | SEP 00 |
| 52.211-18 | Variation in Estimated Quantity | APR 84 |
| 52.215-2 | Audit and Records-Negotiation | OCT 10 |
| 52.215-10 | Price Reduction for Defective Cost or Pricing Data | AUG 11 |
| 52.215-11 | Price Reduction for Defective Cost or Pricing Data—Modifications | AUG 11 |
| 52.215-12 | Subcontractor Cost or Pricing Data | OCT 10 |
| 52.215-13 | Subcontractor Cost or Pricing Data—Modifications | OCT 10 |
| 52.215-15 | Pension Adjustments and Asset Reversions | OCT 10 |
| 52.215-17 | Waiver of Facilities Capital Cost of Money | OCT 97 |
| 52.215-18 | Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions | JUL 05 |
| 52.219-4 | Notice of Price Evaluation Preferences for HUBZone Small Business Concerns | OCT 14 |
| 52.219-8 | Utilization of Small Business Concerns | OCT 14 |

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|---|---|---|
| 52.219-9 | Small Business Subcontracting Plan | OCT 14 |
| | Alternate II (If Contractor Submitted Plan With Offer) | OCT 01 |
| 52.219-16 | Liquidated Damages—Subcontracting Plan | JAN 99 |
| 52.219-28 | Post-Award Small Business Program Representation | JUL 13 |
| 52.222-3 | Convict Labor | JUN 03 |
| 52.222-4 | Contract Work Hours and Safety Standards—Overtime Compensation | MAY 14 |
| 52.222-6 | Construction Wage Rate Requirements | MAY 14 |
| 52.222-7 | Withholding of Funds | MAY 14 |
| 52.222-8 | Payrolls and Basic Records | MAY 14 |
| 52.222-9 | Apprentices and Trainees | JUL 05 |
| 52.222-10 | Compliance with Copeland Act Requirements | FEB 88 |
| 52.222-11 | Subcontracts (Labor Standards) | MAY 14 |
| 52.222-12 | Contract Termination—Debarment | MAY 14 |
| 52.222-13 | Compliance with Construction Wage Rate Requirements and Related Regulations | MAY 14 |
| 52.222-14 | Disputes Concerning Labor Standards | FEB 88 |
| 52.222-15 | Certification of Eligibility | MAY 14 |
| 52.222-21 | Prohibition of Segregated Facilities | APR 15 |
| 52.222-26 | Equal Opportunity | APR 15 |
| 52.222-27 | Affirmative Action Compliance Requirements for Construction | APR 15 |
| 52.222-35 | Equal Opportunity for Veterans | JUL 14 |
| 52.222-36 | Equal Opportunity for Workers with Disabilities | JUL 14 |
| 52.222-37 | Employment Reports on Veterans | JUL 14 |
| 52.222-40 | Notification of Employee Rights Under the National Labor Relations Act | DEC 10 |
| 52.222-50 | Combating Trafficking in Persons | MAR 15 |
| 52.222-54 | Employment Eligibility Verification | AUG 13 |
| 52.222-55 | Minimum Wages Under Executive Order 13658 | DEC 14 |
| 52.223-3 | Hazardous Material Identification and Material Safety Data | JAN 97 |
| | Alternate I | JUL 95 |

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| 52.223-5 | Pollution Prevention and Right-to-Know Information | MAY 11 |
| 52.223-6 | Drug-Free Workplace | MAY 01 |
| 52.223-15 | Energy Efficiency in Energy-Consuming Products | DEC 07 |
| 52.223-17 | Affirmative Procurement of EPA-designated Items in Service and Construction Contracts | MAY 08 |
| 52.223-18 | Encouraging Contractor Policies to Ban Text Messaging While Driving | AUG11 |
| 52.223-19 | Compliance with Environmental Management Systems | MAY 11 |
| 52.224-1 | Privacy Act Notification | APR 84 |
| 52.224-2 | Privacy Act | APR 84 |
| 52.225-13 | Restrictions on Certain Foreign Purchases | JUN 08 |
| 52.227-1 | Authorization and Consent | DEC 07 |
| 52.227-2 | Notice and Assistance Regarding Patent and Copyright | DEC 07 |
| 52.227-4 | Patent Indemnity—Construction Contracts | DEC 07 |
| 52.227-23 | Rights to Proposal Data (Technical) | JUN 87 |
| 52.228-2 | Additional Bond Security | OCT 97 |
| 52.228-5 | Insurance—Work on a Government Installation | JAN 97 |
| 52.228-11 | Pledges of Assets | JAN 12 |
| 52.228-12 | Prospective Subcontractor Requests for Bonds | MAY 14 |
| 52.228-14 | Irrevocable Letter of Credit | NOV 14 |
| 52.228-15 | Performance and Payment Bonds—Construction | OCT 10 |
| 52.229-3 | Federal, State, and Local Taxes | FEB 13 |
| 52.232-5 | Payments under Fixed-Price Construction Contracts | MAY 14 |
| 52.232-17 | Interest | MAY 14 |
| 52.232-23 | Assignment of Claims | MAY 14 |
| 52.232-27 | Prompt Payment for Construction Contracts | MAY 14 |
| 52.232-33 | Payment by Electronic Funds Transfer—System for Award Management | JUL 13 |
| 52.233-39 | Unenforceability of Unauthorized Obligations | JUN 13 |
| 52.232-40 | Providing Accelerated Payments to Small Business Subcontractors | DEC 13 |
| 52.233-1 | Disputes | MAY 14 |
| | Alternate I | DEC 91 |

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| 52.233-3 | Protest after Award | AUG 96 |
| 52.233-4 | Applicable Law for Breach of Contract Claim | OCT 04 |
| 52.236-1 | Performance of Work by the Contractor | APR 84 |
| 52.236-2 | Differing Site Conditions | APR 84 |
| 52.236-3 | Site Investigation and Conditions Affecting the Work | APR 84 |
| 52.236-5 | Material and Workmanship | APR 84 |
| 52.236-6 | Superintendence by the Contractor | APR 84 |
| 52.236-7 | Permits and Responsibilities | NOV 91 |
| 52.236-8 | Other Contracts | APR 84 |
| 52.236-9 | Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements | APR 84 |
| 52.236-10 | Operations and Storage Areas | APR 84 |
| 52.236-11 | Use and Possession Prior to Completion | APR 84 |
| 52.236-12 | Cleaning Up | APR 84 |
| 52.236-13 | Accident Prevention Alternate I | NOV 91 |
| 52.236-14 | Availability and Use of Utility Services | APR 84 |
| 52.236-17 | Layout of Work | APR 84 |
| 52.236-21 | Specifications and Drawings for Construction | FEB 97 |
| 52.236-23 | Responsibility of the Architect-Engineer Contractor | APR 84 |
| 52.236-25 | Requirements for Registration of Designers | JUN 03 |
| 52.242-13 | Bankruptcy | JUL 95 |
| 52.242-14 | Suspension of Work | APR 84 |
| 52.243-4 | Changes | JUN 07 |
| 52.244-6 | Subcontracts for Commercial Items | APR 15 |
| 52.245-1 | Government Property (If Government Furnishes Property for Use in Contract Performance) | APR 12 |
| 52.245-9 | Use and Charges | APR 12 |
| 52.246-12 | Inspection of Construction | AUG 96 |
| 52.246-21 | Warranty of Construction | MAR 94 |

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| 52.249-2 | Termination for Convenience of the Government (Fixed-Price) | APR 12 |
| | Alternate I | SEP 96 |
| 52.249-10 | Default (Fixed-Price Construction) | APR 84 |
| 52.253-1 | Computer Generated Forms | JAN 91 |

(3) GSA Acquisition Regulation (GSAR) Clauses:

| NUMBER | TITLE | DATE |
|---|---|---|
| 552.203-71 | Restriction on Advertising | SEP 99 |
| 552.211-72 | References to Specifications in Drawings | FEB 96 |
| 552.215-70 | Examination of Records by GSA | FEB 96 |
| 552.219-75 | GSA Mentor-Protégé Program | SEP 09 |
| 552.219-76 | Mentor Requirements and Evaluation | MAR 12 |
| 552.227-71 | Drawings and Other Data to Become Property of the Government | MAY 89 |
| 552.228-5 | Government as Additional Insured | MAY 09 |
| 552.229-70 | Federal, State, and Local Taxes | APR 84 |
| 552.236-70 | Definitions | APR 84 |
| 552.236-71 | Authorities and Limitations | APR 84 |
| 552.236-74 | Working Hours | APR 84 |
| 552.236-75 | Use of Premises | APR 84 |
| 552.236-76 | Measurements | APR 84 |
| 552.236-77 | Specifications and Drawings | SEP 99 |
| 552.236-78 | Shop Drawings, Coordination Drawings, and Schedules | SEP 99 |
| 552.236-80 | Heat | APR 84 |
| 552.236-82 | Subcontracts | APR 84 |
| 552.243-71 | Equitable Adjustments | JAN 09 |
| 552.246-72 | Final Inspection and Tests | SEP 99 |

## IV.C. Subcontract Requirements

The Contractor is advised that many FAR, GSAR and other Agreement clauses are required to be flowed down to subcontracts. Clauses containing flow down requirements include, but may not be limited to, those listed below. Clauses marked by an asterisk (*) are not required to be

flowed down to subcontracts for professional architect or engineer services. Clauses marked by a double asterisk (**) are only required to be flowed down to subcontracts for professional architect or engineer services. Unless otherwise indicated, the extent of the flow down shall be as required in the clause. The Contractor is responsible for ensuring that all necessary flow-down clauses are included in all subcontracts.

(1) FAR Clauses:

| NUMBER | TITLE | DATE |
|---|---|---|
| | Applicable Buy American Clause* (See Buy American Requirements under "Clauses Incorporated in Full Text" in Section IV) | |
| 52.203-7 | Anti-Kickback Procedures | MAY 14 |
| 52.203-10 | Price or Fee Adjustment for Illegal or Improper Activity | MAY 14 |
| 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions | OCT 10 |
| 52.203-13 | Contractor Code of Business Ethics and Conduct (If Contract is Greater than $5 Million or Performance Period is Greater than 120 Days) | APR 10 |
| 52.203-14 | Display of Hotline Poster(s) (If Contract is Greater than $5 Million) | DEC 07 |
| 52.204-9 | Personal Identity Verification of Contractor Personnel | JAN 11 |
| 52.204-10 | Reporting Executive Compensation and First-Tier Subcontract Awards | JUL 13 |
| 52.204-14 | Service Contract Reporting Requirements (Applies to contracts estimated value of $500,000 or greater) | JAN 14 |
| 52.215-2 | Audit and Records – Negotiation | OCT 10 |
| 52.215-12 | Subcontractor Cost or Pricing Data | OCT 10 |
| 52.215-13 | Subcontractor Cost or Pricing Data – Modifications | OCT 10 |
| 52.215-15 | Pension Adjustments and Asset Reversions | OCT 10 |
| 52.215-18 | Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions | JUL 05 |
| 52.222-4 | Contract Work Hours and Safety Standards—Overtime Compensation* | MAY 14 |
| 52.222-6 | Construction Wage Rate Requirements* | MAY 14 |
| 52.222-7 | Withholding of Funds* | MAY 14 |
| 52.222-8 | Payrolls and Basic Records* | MAY 14 |
| 52.222-9 | Apprentices and Trainees* | JUL 05 |
| 52.222-10 | Compliance with Copeland Act Requirements* | FEB 88 |
| 52.222-11 | Subcontracts (Labor Standards)* | MAY 14 |
| 52.222-12 | Contract Termination—Debarment* | FEB 88 |
| 52.222-13 | Compliance with Construction Wage Rate Requirements and Related Regulations* | MAY 14 |
| 52.222-14 | Disputes Concerning Labor Standards* | FEB 88 |
| 52.222-15 | Certification of Eligibility* | MAY 14 |
| 52.222-21 | Prohibition of Segregated Facilities | APR 15 |
| 52.222-26 | Equal Opportunity | APR 15 |
| 52.222-27 | Affirmative Action Compliance Requirements for Construction* | APR 15 |
| 52.222-35 | Equal Opportunity for Veterans | JUL 14 |
| 52.222-36 | Equal Opportunity for Workers with Disabilities | JUL 14 |
| 52.222-37 | Employment Reports on Veterans | JUL 14 |

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|---|---|---|
| 52.222-40 | Notification of Employee Rights Under the National Labor Relations Act | DEC 10 |
| 52.222-50 | Combating Trafficking in Persons | MAR 15 |
| 52.222-54 | Employment Eligibility Verification | AUG 13 |
| 52.222-55 | Minimum Wages Under Executive Order 13658 | DEC 14 |
| 52.223-6 | Drug-Free Workplace | MAY 01 |
| 52.223-15 | Energy Efficiency in Energy-Consuming Products* | DEC 07 |
| 52.223-17 | Affirmative Procurement of EPA-designated Items in Service and Construction Contracts* | MAY 08 |
| 52.223-18 | Encouraging Contractor Policies to Ban Text Messaging While Driving | AUG 11 |
| 52.223-19 | Compliance with Environmental Management Systems | MAY 11 |
| 52.225-13 | Restrictions on Certain Foreign Purchases | JUN 08 |
| 52.227-1 | Authorization and Consent | DEC 07 |
| 52.228-5 | Insurance—Work on a Government Installation | JAN 97 |
| 52.236-13 | Accident Prevention Alternate I* | NOV 91 |
| 52.236-23 | Responsibility of the Architect-Engineer Contractor** | APR 84 |
| 52.236-25 | Requirements for Registration of Designers** | JUN 03 |

(2) GSA Acquisition Regulation (GSAR) Clauses:

| NUMBER | TITLE | DATE |
|---|---|---|
| 552.215-70 | Examination of Records by GSA | FEB 96 |
| 552.227-71 | Drawings and Other Data to Become Property of the Government** | MAY 89 |

(3) Agreement Clauses:

In Section III of this contract, *Sensitive But Unclassified (SBU) Building Information* and Safeguarding Sensitve Date and information Technology Resources. (Terms and Conditions)