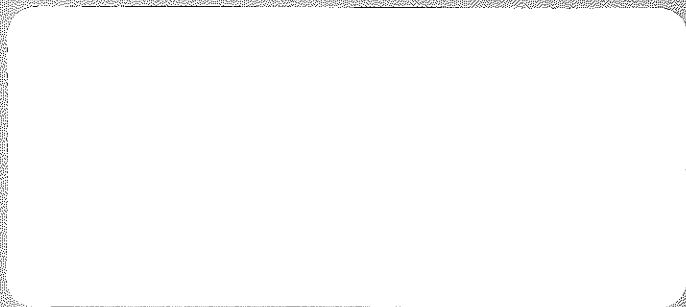


SPECIFICATIONS





Contract No. _____

SPECIFICATIONS
FOR
VILLAGE OF GROVER HILL
SEWAGE WORKS IMPROVEMENTS

March, 1989

Prepared For:
VILLAGE OF GROVER HILL
VILLAGE COUNCIL
BOARD OF PUBLIC AFFAIRS

Prepared By:
DESIGN ENTERPRISE, LTD.
126 South Ludlow Street
Dayton, Ohio 45402

Certified By:

VILLAGE OF GROVER HILL
SEWAGE WORKS IMPROVEMENTS
BOOK 3 - Division I & II
Bid Documents, Contract Documents
Federal Regulations

Stephen C. McPherson, P.E.
Ohio #E-52085
DEL Job #86065D

MAR. 23 1989

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ADVERTISEMENT FOR BIDS

Notice is hereby given that the Village Council, Village of Grover Hill, Ohio will receive sealed bids for the construction of Sewage Works Improvements.

The project is divided into two (2) Divisions as follows:

DIVISION I - COLLECTION SYSTEM IMPROVEMENTS: (Book 1)

Work includes the completion of systems listed below:

1. Furnish and install 4", 6", 8" and 10" Small Diameter Gravity (SDG) Sewer including all cleanouts, manholes, and individual service pumps.
2. Furnish and install septic tanks and individual service laterals as shown on drawings.

DIVISION II - REGIONAL TREATMENT FACILITY/LAB BUILDING: (Book 2)

Development of approximately 2-1/2 acres for two (2) aerated wastewater treatment lagoons with return sludge; one (1) sludge pond; access roadway; pressure mains and units, including aeration equipment, disinfection equipment, pump equipment, lift station, main pump station, monitoring equipment, and the lab building and appurtenances. Two (2) contracts will be let for General Construction (G.C.) and Electrical Construction (E.C.).

All workmanship and materials are to be in accordance with the Contract Documents, which may be examined at the following locations:

- o Village of Grover Hill
Village Hall
1 Main Street
Grover Hill, Ohio 45849
- o Design Enterprise, Ltd.
126 South Ludlow Street
Dayton, Ohio 45402
- o F.W. Dodge Reports
3592 Corporate Drive
Suite 106
Columbus, Ohio 43229

Separate sealed bids for the construction of the "Village of Grover Hill Sewage Works Improvements" will be received by the Village Council at the Village Hall until 7:00 P.M. (Local Time) on the day of April 26, 1989, and then publicly opened and read aloud.

Proposals shall be properly and completely executed on the proposal form furnished to Bidders and must be accompanied with the executed Non-Collusion Affidavit. Bidders shall accompany their bids with a Bid Guaranty in an amount equal to (100%) one hundred percent of the maximum amount bid.

The Village Council reserves the right to reject any and all bids, delete any portion or portions thereof or to waive any irregularities in the bidding.

Copies of the Contract Documents may be obtained from the office of:

o Design Enterprise, Ltd.
126 South Ludlow Street
Dayton, Ohio 45402
(513) 222-9100

A fee for each set of Division Plans and Specifications is required as follows:

Division I - Collection System Improvements \$100.00
Division II - Treatment Facility/Lab Building \$100.00

All checks shall be made payable to DESIGN ENTERPRISE, LTD. Holders of Record, who return the Contract Documents in good condition within ten (10) days after the bid opening, will be refunded fifty percent (50%) of the fee.

A Pre-Bid Conference for Divisions I and II will be held at the Village Hall on the 12th day of April, 1989 at 1:00 P.M. (Local Time), at which time an inspection of the Project Site will be conducted.

Each Bidder shall fully comply with the requirements, terms and conditions of the Ohio EPA Minority Business Enterprise requirements, including the use of a goal-oriented system for increased minority business participation. The Bidder commits to the goals for minority business participation contained in the Specifications.

Any Contract or Contracts awarded under this Advertisement for Bids are expected to be funded in part by a grant from the United States Environmental Protection Agency (USEPA). Neither the United States or any of its departments, agencies, or employees is or will be a party to the Advertisement for Bids or any resulting Contract. This procurement will be subject to regulations contained in 40 CFR, Part 31, published on March 11, 1988, and the EPA policy and goal regarding the increased use of Minority Business Enterprise (MBE). The Policy, as well as the cited Regulations, are contained in these Specifications.

By: VILLAGE OF GROVER HILL
John Moon, Mayor

INFORMATION FOR BIDDERS

BIDS will be received by the Village Council of the Village of Grover Hill, Ohio (herein called the "OWNER"), at the Village Hall, 1 Main Street, Grover Hill, Ohio 45849, until 7:00 P.M., Local Time, on the 26th day of April, 1989, and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope addressed to the Village of Grover Hill, Village Hall, 1 Main Street, Grover Hill, Ohio 45849. Each sealed envelope containing a BID must be plainly marked on the outside as "Bid for the Village of Grover Hill, Ohio, Sewage Works Improvements Project" and the envelope should bear on the outside the Bidder's name, address and license number, if applicable, and the name of the Division for which the BID is submitted. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the OWNER at the Village of Grover Hill, Village Hall, 1 Main Street, Grover Hill, Ohio 45849.

1. Proposal:

All BIDS must be made on the required Bid Schedule. All blank spaces for BID prices must be filled in, in ink or typewritten, and the Bid Schedule must be fully completed and executed when submitted. Only one (1) copy of the Bid Schedule is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No Bidder may withdraw a BID within sixty (60) days after the actual date of the opening thereof. Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder.

Bidders must satisfy themselves of the accuracy of the estimated quantities in the Bid Schedule by examination of the site and a review of the Drawings and Specifications, including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of work or of the nature of the work to be done.

One bid proposal and respective submittals are to be executed for each contract division. Do not combine bid proposals and respective submittals for more than one contract division bid.

The OWNER shall provide to BIDDERS prior to bidding all information which is pertinent to and delineates and describes the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the Project. Information obtained from an officer, agent or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve the CONTRACTOR from fulfilling any of the conditions of the Contract.

2. Proposal Guarantee:

Each bid must be accompanied by a Bid Guarantee. Said Bid Guarantee shall be a Bond in an amount equal to 100% of the Bid, including alternatives, as surety for the execution of the Contract. The Bid Guarantee (Bid Bond) form is included in the bidding documents. Should any Bid be rejected, such Bond will be returned to the Bidder and should any Bid be accepted, such Bond will be returned upon the proper execution and securing with proper performance and payment Bonds of the Contract. When the Contract is executed and delivered, the Bid Guarantee of all unsuccessful bidders will be returned.

3. Performance and Payment Bond

A Performance Bond and a Payment Bond, each in the amount of One Hundred Percent (100%) of the Contract Price, with a corporate surety approved by the OWNER, will be required for the faithful performance of the Contract.

Attorneys-in-fact who sign Bid Bonds or Payment Bonds and Performance Bonds must file with each Bond a certified and effective dated copy of their Power of Attorney.

The party to whom the Contract is awarded will be required to execute the Agreement and obtain the Performance Bond and Payment Bond within ten (10) calendar days from the date when Notice of Award is delivered to the BIDDER. The Notice of Award shall be accompanied by the necessary Agreement and Bond forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may consider the BIDDER in default, in which case the Bid Bond accompanying the proposal shall become the property of the OWNER.

The OWNER, within ten (10) days of receipt of an acceptable Performance Bond, Payment Bond and Agreement signed by the party to whom the Agreement was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw the signed Agreement. Such notice of withdrawal shall be effective upon the receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER and CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

4. Competency of Bidders:

The OWNER may make such investigations as deemed necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any Bid if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

5. Award of Contract:

A conditional or qualified Bid will not be accepted. Award will be made to the lowest responsible BIDDER. The low BIDDER shall supply the names and addresses of major material Suppliers and Subcontractors when required to do so by the OWNER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout.

6. Contract Documents Examination:

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to its BID.

7. EEO Regulations:

Further, the Bidder agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the Federal Regulations included herein.

Bidders are further advised that the January 27, 1972 Equal Employment Opportunity Executive Order of the Governor of Ohio is also applicable to this Bid Invitation.

8. Engineer:

The Engineer is Design Enterprise, Ltd. The Engineer's address is 126 South Ludlow Street, Dayton, Ohio 45402. Phone: (513) 222-9100.

9. Award of Multiple Divisions:

Proposals offering deducts contingent on award of multiple Divisions will be used in evaluating the lowest, responsive, responsible Bidder.

10. Method of Bidding - Unit Price:

Submit Unit Price Bids for the following Division:

Division I - Collection System Improvements

11. Method of Bidding - Lump Sum:

Submit Lump Sum Bids for the Contracts within the following Division:

Division II - Treatment Facility/Lab Building

Contract "GC" - General Construction

Contract "EC" - Electrical Construction

12. Affidavit

As a requisite with submission of the final estimate, the Contractor will be required to sign the Affidavit - Village Income Tax on the form attached herein, and have the same properly notarized.

13. Bid Submittals, Required Documents:

Information to be submitted with Bid shall be as follows:

- a. Executed Proposal
- b. Non-Collusion Affidavit
- c. Certification of Non-Segregated Facilities (Pg. FR-12)
- d. Bid Bond
- e. Signed copies of all Addenda
- f. Compliance Statement (Pg. FR-2)
- g. List of Proposed Equipment Manufacturers
- h. Satisfactory proof of carriage, or a written statement from a reputable insurance company, stating that Contractor has or will be furnished with proper insurance coverages as outlined in the General Conditions
- i. W/MBE Data Sheet 1 (Pg. FR-43)
- j. Notice to Labor Unions (Pg. FR-15)

SUPPLEMENTAL INFORMATION FOR BIDDERS

1. PROPOSAL:

All Bids must be made on the forms contained herein and the Bid Prices must be written therein.

Each BIDDER is required to state in his Bid his name and place of business and the names of all persons interested with him; in case of a corporation, the names of other than the president and secretary need not be given. Each BIDDER shall also furnish a detailed accounting of their experience, skill and financial standing, and equipment available to perform the Work. The quantities listed in the Bid are to be considered as approximate and are to be used only for the comparison of the Bids and as a basis for computing amounts of security or penal sums of Bonds to be furnished. The unit prices to be tendered by the BIDDERS are to be tendered expressly for the scheduled quantities as they may be increased or decreased. Payments, except for lump sum Contracts, and except for lump sum items in unit price Contracts, will be made to the CONTRACTOR for the actual quantities only of work performed or materials furnished in accordance with the Plans and Specifications, and it is understood that the scheduled quantities of work to be done and materials to be furnished may each be increased or diminished without in any way invalidating the unit Bid prices.

If the Bid for the Work is a Unit Price Bid, the BIDDER'S Proposal shall separately state the price for labor and material.

2. INTERPRETATION OF CONTRACT DOCUMENTS:

If any person contemplating submitting a Bid for the proposed Contract is in doubt as to the true meaning of any part of the Plans, Specifications or other proposed Contract Documents, he may submit to the ENGINEER a written request for an interpretation thereof. This must be received no later than ten (10) days prior to the Bid date. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by Addendum duly issued and a copy of such Addendum will be mailed or delivered to each person receiving a set of such documents. The awarding authority will not be responsible for any other explanations or interpretations of the proposed documents.

3. EXAMINATION OF SITE:

BIDDERS are required to satisfy themselves by personal examination at the site of Work and by examination and study of the Contract Documents as to the conditions existing and the difficulties likely to be encountered in the construction of the Work.

The CONTRACTOR will accept full responsibility for all conditions or difficulties that may be encountered in the execution of the Work and no plea of ignorance of conditions may be entered at any time. The CONTRACTOR will be required to fulfill in every way all the requirements of the Contract. No claim for extra compensation or for an extension of time will be accepted based on failure of the CONTRACTOR to make field examinations and investigations prior to Bidding, or for omissions made because of lack of familiarization with the Contract Documents.

A Pre-Bid meeting for prospective BIDDERS will be arranged two (2) weeks prior to the date of Bid opening. All prospective BIDDERS will be notified of the time and place of the meeting.

The CONTRACTOR is hereby directed to the Appendix of these Specifications and the Soil Boring Data. This report is provided for INFORMATION ONLY. The OWNER or the ENGINEER is not responsible for any errors, omissions, or conditions found to be materially different than stated or indicated in the report. The CONTRACTOR shall, prior to bidding, fully satisfy himself on the sub-surface conditions by whatever means he deems necessary (with OWNER'S approval) to assure familiarization with the existing conditions of the site.

4. AWARD OF CONTRACT:

Award of the Contract shall be made as a whole to one BIDDER, a Contract to one BIDDER for each Contract of a Division, or any combination of Contracts in each Division, of the Bid Proposal.

OWNER reserves the right to reject any and all Bids, to waive any and all informalities, and the right to disregard all non-conforming, non-responsive or conditional Bids. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, OWNER shall consider the qualifications of the BIDDERS, whether or not the Bids comply with the prescribed requirements, and alternates and unit prices, if requested, in the Bid Forms.

OWNER may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be submitted as provided in the Supplementary Conditions. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by the OWNER.

5. SALES TAX:

Materials to be incorporated in this Work may be purchased by the CONTRACTOR free of Ohio State Sales Tax.

6. FEDERAL WAGE DETERMINATION:

This Project will be constructed in accordance with a Federal Wage Determination as established by the Secretary of the U.S. Department of Labor, a copy of which will be issued to all BIDDERS with the Specifications.

7. EQUIPMENT GUARANTEE:

It is the intention of these Specifications that all major items of mechanical equipment have their installation and initial operation supervised by a representative of the equipment manufacturer. The CONTRACTOR shall furnish duplicate certified statements from the respective equipment manufacturer to the ENGINEER, countersigned by the CONTRACTOR, stating that their equipment has been installed in the proper manner before placing the equipment into operation.

8. USE OF STREETS:

In addition to maintaining the required barricades and warning lights, the CONTRACTOR shall erect and maintain direction and information signs directing traffic around the construction work. The CONTRACTOR shall provide reasonable access facilities to property along the Work.

9. CONSTRUCTION RIGHT-OF-WAYS:

All right-of-ways for construction will be furnished by the OWNER, except for State and Federal highways. The CONTRACTOR will be required to restrict his operations to the limits of the right-of-way and restore the site in the manner required by the Contract Documents. The CONTRACTOR will be required to furnish any and all protection. Special construction conditions are shown in the Contract Documents.

10. LIQUIDATED DAMAGES:

It is to be understood and agreed by the CONTRACTOR awarded the Work that time is of the essence of the Contract, and that, in the event the CONTRACTOR shall fail in the performance of the Work specified and required to be performed within the above stipulated time of completion, after due adjustment for any extension or extensions of time authorized by Change Order, the CONTRACTOR shall pay to the OWNER, as stipulated, liquidated damages, and not as a penalty, the sum indicated in the Bid Proposal.

The OWNER shall have the right to deduct said liquidated damages from any money in its hands, otherwise due or to become due to said CONTRACTOR, or to sue and to recover compensation for damages for non-performance of this Contract within the time of completion stipulated herein and provided for.

11. TESTING OF MATERIALS:

The CONTRACTOR shall furnish as a part of his costs for Work under his respective Contract, manufacturer's certification that the materials furnished meet with the respective designations as specified, such as A.S.T.M., A.W.W.A., A.S.A., etc.

12. SPECIFICATION EDITION OR DATE:

Where reference is made to A.S.T.M., A.W.W.A., N.E.M.A., or other standard codes and specifications and the year of adoption is not shown, the current standard shall apply.

13. CONTRACT DRAWINGS AND SPECIFICATIONS:

The CONTRACTOR awarded the Work shall receive, without charge, five (5) sets of the Contract Drawings and Specifications for his work.

Additional sets of Plans and Specifications required by the CONTRACTOR awarded this Work will be furnished to the CONTRACTOR at cost.

14. ENGINEER'S ESTIMATE:

The ENGINEER'S Estimate for each Contract of each Division is: Division I Contract \$1,135,000.00; Division II, Contract "GC" \$395,000.00; Division II, Contract "EC" \$35,000.00. A copy of the ENGINEER'S Estimate is on file at the Village Hall.

15. BID GUARANTY:

Each Bid must be accompanied by a Bid Guaranty. Said Bid Guaranty shall be a Bond in an amount equal to 100% of the Bid, including alternatives, as surety for the execution of the Contract. The Bid Guaranty (Bid Bond) form is included in the Bidding Documents. Should any Bid be rejected, such Bond will be returned to the BIDDER and should any Bid be accepted, such Bond will be returned upon the proper execution and securing with proper Performance and Payment Bonds of the Contract. When the Contract is executed and delivered, the Bid Guaranty of all unsuccessful BIDDERS will be returned.

FEDERAL REGULATIONS

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR
CERTIFICATIONS OF NON-SEGREGATED FACILITIES

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Date _____

Signature of Bidder or Prospective Contractor

Address (including Zip Code)

• U.S.GPO:1961-0-765-013/1600 •

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Women Apply Nationwide

Goal = 6.9%

Goals for Minority Utilization

Goal per Trade = 7.3%

These goals are applicable to all the CONTRACTOR'S construction work (whether or not it is Federal or Federally assisted) performed in the covered area.

The CONTRACTOR'S compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority female employment and training must be substantially uniform throughout the length of the Contract and in each trade, and the CONTRACTOR shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the CONTRACTOR'S goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against total work hours performed.

3. The CONTRACTOR shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of Ten Thousand Dollars (\$10,000.00) at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Subcontractor; Employer-Identification Number; estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed.
4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is Paulding County, Ohio.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
- b. "Director" means the Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer Identification Number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 - (i) Black - all persons having origins in any of the Black African racial groups not of Hispanic origin;
 - (ii) Hispanic - all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
 - (iii) Asian and Pacific Islander - all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; and
 - (iv) American Indian or Alaskan Native - all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

2. Whenever the CONTRACTOR, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each Subcontract in excess of \$10,000.00 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

3. If the CONTRACTOR is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. CONTRACTORS must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each CONTRACTOR or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered CONTRACTOR'S or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The CONTRACTOR shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the CONTRACTOR should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The CONTRACTOR is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the CONTRACTOR has a collective bargaining agreement to refer either minorities or women shall excuse the CONTRACTOR'S obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the CONTRACTOR during the training period, and the CONTRACTOR must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The CONTRACTOR shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the CONTRACTOR'S compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The CONTRACTOR shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the CONTRACTOR'S employees are assigned to work. The CONTRACTOR, where possible, will assign two or more women to each construction project. The CONTRACTOR shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the CONTRACTOR'S obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the CONTRACTOR or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the CONTRACTOR by the union, or, if referred, not employed by the CONTRACTOR, this shall be documented in the file with the reason therefor, along with whatever additional actions the CONTRACTOR may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the CONTRACTOR has a collective bargaining agreement has not referred to the CONTRACTOR a minority person or woman sent by the CONTRACTOR, or when the CONTRACTOR has other information that the union's referral process has impeded the CONTRACTOR'S efforts to meet its obligation.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the CONTRACTOR'S employment needs, especially those programs funded or approved by the Department of Labor. The CONTRACTOR shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the CONTRACTOR'S EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the CONTRACTOR in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the CONTRACTOR'S EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the CONTRACTOR'S EEO policy with other Contractors and Subcontractors with whom the CONTRACTOR does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the CONTRACTOR'S recruitment area

and employment needs. Not later than one month prior to the date for the acceptance of the applications for apprenticeship or other training by any recruitment source, the CONTRACTOR shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer vacation employment to minority and female youth both on the site and in other areas of a CONTRACTOR'S workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the CONTRACTOR'S obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the CONTRACTOR'S EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor- community, or other similar group of which the CONTRACTOR is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications, provided that the CONTRACTOR actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the CONTRACTOR'S minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the CONTRACTOR. The obligation to comply, however, is the CONTRACTOR'S and failure of such a group to fulfill an obligation shall not be a defense for the CONTRACTOR'S noncompliance.
9. A single goal for minorities and a separate single goal for women has been established. The CONTRACTOR, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the CONTRACTOR may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the CONTRACTOR has achieved its goals for women generally, the CONTRACTOR may be in violation of the Executive Order if a specific minority group of women is under-utilized.)
10. The CONTRACTOR shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The CONTRACTOR shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The CONTRACTOR shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing Subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract, Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The CONTRACTOR, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the CONTRACTOR fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The CONTRACTOR shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by Government and to keep records. Records shall at least include for each employee the name; address; telephone numbers; construction trade; union affiliation, if any; employee Identification Number when assigned; social security number; race; sex; status (e.g., mechanic, apprentice, trainee, helper, or laborer); dates of changes in status; hours worked per week in the indicated trade; rate of pay; and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

CERTIFICATION OF NONSEGREGATED FACILITIES

By the submission of this Bid, the Bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. The Bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity Clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

By _____

Title _____

Firm _____

Date _____

COVENANT B OF THE JANUARY 27, 1972,
EQUAL EMPLOYMENT OPPORTUNITY EXECUTIVE ORDER
OF THE GOVERNOR OF OHIO

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, or sex. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, or sex. Such action shall include, but is not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The CONTRACTOR will in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, or sex.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State Administering Agency advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this covenant and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of the DPW Regulation on EEO, and with the implementing rules, regulations, and applicable orders of the State Equal Employment Opportunity Coordinator.
5. The CONTRACTOR agrees he will fully cooperate with the State Administering Agency, the State Equal Employment Opportunity Coordinator and with any other official or agency or the State of Federal government which seeks to eliminate unlawful employment discrimination, and with all other State and Federal efforts to assure equal employment practices under this Contract, and said CONTRACTOR shall comply promptly with all requests and direction from the State Administering Agency, the State Equal Employment Opportunity Coordinator, and any of the State of Ohio's officials and agencies in this regard, both before and during construction.

6. Full cooperation as expressed in clause (5), above, shall include but not be limited to, being a witness and permitting employees to be witnesses and complainants in any proceeding involving questions of unlawful employment practices, furnishing all information and reports required by the DPW Regulation on EEO and by the rules, regulations, and orders of the State Equal Employment Opportunity Coordinator pursuant thereto, and permitting access to his books, records, and accounts by the State Administering Agency and the State Equal Employment Coordinator for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders this Contract may be cancelled, terminated, or suspended in whole, or in part, and the CONTRACTOR may be declared ineligible for further State Contracts or State Assisted Construction in accordance with the procedures authorized in the DPW Regulation on EEO, and such other sanctions may be instituted and remedies invoked as provided in said Regulation or by rule, regulation, or order of the State Equal Employment Opportunity Coordinator, as otherwise provided by law.

In the event this Contract is terminated for a material breach of said Regulation, the CONTRACTOR shall become liable for any and all damages, which shall accrue to the State Administering Agency, and Applicant and the State of Ohio as a result of said breach.

8. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State Equal Employment Opportunity Coordinator issued pursuant to Section 204 of the DPW Regulation on EEO, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontractor or purchase order as the State Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor, vendor or other party as a result of such direction by the State Administering Agency, the CONTRACTOR may request the State of Ohio to enter into such litigation to protect the interests of the State.

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS

NONDISCRIMINATION IN EMPLOYMENT

TO: _____
(Name of union or organization of workers)

The undersigned currently holds contract(s) with (Name of
Applicant) _____

involving funds or credit of the U.S. Government or a subcontract(s) and in accordance with the Executive Order 11246, as amended, dated September 24, 1965, as amended, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to the following:

HIRING, PLACEMENT UPGRADING, TRANSFER, OR DEMOTION
RECRUITMENT, ADVERTISING, OR SOLICITATION FOR EMPLOYMENT,
TRAINING DURING EMPLOYMENT, RATES OF PAY OR OTHER FORMS OF
COMPENSATION, SELECTION FOR TRAINING INCLUDING APPRENTICE-
SHIP, LAYOFF OR TERMINATION.

This Notice is furnished to you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order 11246, as amended.

Copies of this Notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

(Contractor or Subcontractor)

Date: _____

LABOR STANDARDS PROVISIONS
FOR
FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

The following acts are considered a part of these Specifications:

- A. Davis-Bacon (40 USC 276a through 276a-7)
- B. Contract Work Hours and Safety Standards Act - Overtime Compensation (40 USC 327 through 333); Apprentices and Trainees; Payrolls and Basic Records
- C. Copeland Regulations of the Secretary of Labor (29 CFR, Part 3); Withhold of Funds; Subcontracts; Contract Termination - Debarment; Nondiscrimination Provision
- D. Contract Work Hours and Safety Standards Act - Safety and Health (40 USC 327 through 333)

This project shall conform to the EPA Version of the Labor Standards Provisions, as included in these Specifications.

Labor Standards Provisions for Federal and Federally Assisted Contracts

Section 5.5 Contract provisions and related matters.

(a) The Administrator of the U.S. Environmental Protection Agency (EPA) requires the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of the U.S. Environmental Protection Agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant, or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in section 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in section 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records ac-

curately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration (W&H, ESA), U.S. Department of Labor, Washington, DC 20210. The Administrator W&H, ESA, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of

the contracting officer, to the Administrator W&H, ESA for determination. The Administrator W&H, ESA, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1225-0140.)

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

(3) Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and Social Security Number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control 1215-0140 and 1215-0017)

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the U.S. Environmental Protection Agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the U.S. Environmental Protection Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form 347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014 -1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215-0149.)

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

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of 29 CFR Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a) (3) (ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a) (3) (i) of this section available for inspection, copying, or transcription by authorized representatives of the U.S. Environmental Protection Agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the U.S. Environmental Protection Agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been

certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator W&H, ESA determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of

fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the U.S. Environmental Protection Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning

of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility.

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

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

(b) Contract Work Hours and Safety Standards Act. The Administrator, EPA shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by section 5.5(a) or section 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b) (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The U.S. Environmental Protection Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in section 5.1, the Administrator of EPA shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Administrator EPA shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the U.S. Environmental Protection Agency and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

FEDERAL CONTRACT REQUIREMENTS

The excerpts from Title 40 of the Code of Federal Regulations and all references thereto are considered a part of this contract and are binding on the contractor. The contractor is also made aware of the fact that certain requirements of this contract are to be included in all subagreements entered into with other contractors.

The EPA has requirements as set forth in this specification book.

FEDERAL CONTRACT REQUIREMENTS
CODE OF FEDERAL REGULATIONS

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"U.S. Environmental Protection Agency regulations 40 CFR 33.420 (promulgated March 28, 1983) require that a copy of Subpart F - Subagreement Provisions, be included in the bidding documents. In general, Subpart F is an instruction to the grant recipient identifying minimum contract requirements. We have developed compatible contract provisions and have included them elsewhere in the Federal Contract Requirement Section of this document. Therefore, Subpart F is for information purposes only and Does Not supercede any other provision of the bidding documents."

Part 33,
Subpart F & G

Subpart F—Subagreement Provisions

§ 33.1005 Applicability and scope of this subpart.

(a) This subpart applies to all EPA recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a subagreement.

§ 33.1010 Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §§ 33.1015 through 33.1021, and the appropriate clauses in § 33.1030, in each procurement subagreement.

§ 33.1015 Subagreement provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

- (a) Nature, scope, and extent of work to be performed;
- (b) Timeframe for performance;
- (c) Total cost of the subagreement; and
- (d) Payment provisions.

§ 33.1016 Labor standards provisions.

(This clause applies only when required by statute.) Recipients shall include a copy of EPA Form 5720-4 "Labor Standards Provisions for Federally Assisted Construction Contracts" in each subagreement for construction (as defined by the Secretary of Labor). The form contains the Davis-Bacon Act requirements (40 U.S.C. 276a-276a-7); the Copeland Regulations (29 CFR Part 3); the Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333) and the nondiscrimination provisions in Executive Order 11246, as amended.

(48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983)

§ 33.1019 Patents data and copyrights clause.

Except for construction grant subagreements, all subagreements shall include notice of EPA requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the conduct of work under a subagreement. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

§ 33.1020

§ 33.1020 Violating facilities clause.

Subagreements in excess of \$100,000 shall contain a provision which requires contractor compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 13) which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

§ 33.1021 Energy efficiency clause.

Subagreements shall comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 33.1030 Model subagreement clauses.

Recipients must include, when appropriate, the following clauses or their equivalent in each subagreement. Recipients may substitute other terms for "recipient and" "contractor" in their subagreements.

1. SUPERSESSION

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 apply to that work eligible for EPA assistance to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

2. PRIVITY OF SUBAGREEMENT

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this subagreement or any lower tier subagreement. This subagreement is subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. CHANGES

(a) *The following clause applies only to subagreements for construction.* (1) The recipient may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope

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of the subagreement, including but not limited to changes:

(i) In the specifications (including drawings and designs);

(ii) In the time, method or manner of performance of the work;

(iii) In the recipient-furnished facilities, equipment, materials, services or site, or

(iv) Directing acceleration in the performance of the work.

(2) A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the recipient which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances and source of the order and that the contractor regards the order as a change order.

(3) Except as provided in this clause, no order, statement or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify the subagreement in writing. Except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 90 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost the contractor reasonably incurred in attempting to comply with those defective specifications.

(5) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under paragraph (a) (1) or the furnishing of a written notice under paragraph (a) (2), submit a written statement to the recipient setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The contractor may include the statement of claim in the notice under paragraph (2) of this change clause.

(6) No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this subagreement.

(b) *The following clause applies only to subagreements for services.* (1) The recipient may at any time, by written order, make changes within the general scope of this subagreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under

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§ 33.1030

this subagreement, whether or not changed by any order, the recipient shall make an equitable adjustment and modify this subagreement in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the recipient's notification of change, unless the recipient grants additional time before the date of final payment.

(2) No services for which the contractor will charge an additional compensation shall be furnished without the written authorization of the recipient.

(c) *The following clause applies only to subagreements for supplies.* (1) The recipient may at any time, by written order and without notice to the sureties, change the general scope of this subagreement in any one or more of the following:

(i) Drawings, designs or specifications where the supplies to be furnished are specifically manufactured for the recipient;

(ii) Method of shipment or packing; and

(iii) Place of delivery.

(2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, the recipient shall make an equitable adjustment in the subagreement agreement price or delivery schedule, or both, and modify the subagreement in writing. The contractor must assert any claim for adjustment under this clause within 30 days from the date the contractor receives the recipient's notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient has the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

4. DIFFERING SITE CONDITIONS

The following clause applies only to construction subagreements. (a) The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:

(1) Subsurface or latent physical conditions at the site differing materially from those indicated in this subagreement, or

(2) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this subagreement.

(b) The recipient shall promptly investigate the conditions. If it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this subagreement, whether or not changed as a result of such conditions, the recipient shall make an equitable adjustment and modify the subagreement in writing.

(c) No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).

(d) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this subagreement.

5. SUSPENSION OF WORK

The following clause applies only to construction subagreements. (a) The recipient may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

(b) If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the recipient in administration of this subagreement, or by the recipient's failure to act within the time specified in this subagreement (or if no time is specified, within a reasonable time), the recipient shall make an adjustment for any increase in the cost of performance of this subagreement (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the subagreement in writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this subagreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 90 days before the contractor notified the recipient in writing of the act, or failure to act, involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the amount claimed is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under the subagreement.

8. TERMINATION

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been

for the convenience of the recipient. In such event, adjustment of the subagreement price shall be made as provided in paragraph (c) of this clause.

7. REMEDIES

Unless otherwise provided in this subagreement, all claims, counter-claims, disputes and other matters in question between the recipient and the contractor arising out of, or relating to, this subagreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

8. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

[Note: The following clause applies to (1) any subagreement negotiated between the recipient and its contractor in excess of \$100,000; (2) negotiated subagreement amendments or change orders in excess of \$100,000 affecting the price of formally advertised, competitively awarded, fixed price subagreement, or (3) any lower tier subagreement or purchase order in excess of \$100,000 under a subagreement other than a formally advertised, competitively awarded, fixed price subagreement. This clause does not apply to subagreements awarded on the basis of effective price competition.]

(a) The contractor and subcontractor, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements, lower tier subagreements and change orders is based on current, accurate and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this subagreement, lower tier subagreement or amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the recipient shall modify the subagreement in writing to reflect such action.

(b) Failure to agree on a reduction shall be subject to the remedies clause of this subagreement.

[Note: Since the subagreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier subagreements, the contractor may wish to include a clause in each lower tier subagreement requiring the lower tier subcontractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnifica-

tion for defective cost or pricing data submitted by lower tier contractors.]

9. AUDIT; ACCESS TO RECORDS

(a) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30 in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the recipient, and (the State) or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to make paragraphs (a) through (g) applicable to all subagreements he awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance on EPA assisted work under this subagreement and for the time periods specified in 40 CFR Part 30. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the contractor for the time periods specified in 40 CFR Part 30.

(f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

(g) This right of access clause applies to financial records pertaining to all subagreements (except formally advertised, competitively awarded, fixed price subagreements) and all subagreement change orders regardless of the type of subagreement, and all subagreement amendments regardless of the type of subagreement. In addition this right of access applies to all records pertaining to all subagreements, subagreement change orders and subagreement amendments:

(1) To the extent the records pertain directly to subagreement performance;

(2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

(3) If the subagreement is terminated for default or for convenience.

10. COVENANT AGAINST CONTINGENT FEES

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

11. GRATUITIES

(a) If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the recipient, the State or EPA in an attempt to secure a subagreement or favorable treatment in awarding, amending or making any determinations related to the performance of this subagreement, the recipient may, by written notice to the contractor, terminate this subagreement. The recipient may also pursue other rights and remedies that the law or this subagreement provides. However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this subagreement.

(b) In the event this subagreement is terminated as provided in paragraph (a), the

recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. BUY AMERICAN

This clause applies only to construction subagreement awards under 40 CFR Part 35, Subparts E and I. In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

13. Responsibility of the Contractor

(a) The following clause applies only to subagreements for services. (1) The contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this subagreement. If the subagreement involves environmental measurements or data generation, the contractor shall comply with EPA quality assurance requirements in 40 CFR 30.503. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(2) The contractor shall perform the professional services necessary to accomplish the work specified in this subagreement and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

(3) The owner's or EPA's approval of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this subagreement.

(4) The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this subagreement, except for errors,

omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

(5) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

(b) The following clause applies only to subagreements for construction. (1) The contractor agrees to perform all work under this subagreement in accordance with this agreement's designs, drawings and specifications.

(2) The contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall promptly give notice to the contractor of observed defects. In the event that the contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

(3) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

14. FINAL PAYMENT

Upon satisfactory completion of the work performed under this subagreement, as a condition before final payment under this subagreement or as a termination settlement under this subagreement the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this subagreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this subagreement, by State law or otherwise expressly agreed to by the parties to this subagreement, final payment under this subagreement or settlement upon termination of this subagreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this suba-

greement or applicable performance and payment bonds.

(48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983)

Subpart G—Protests

§ 33.1105 Applicability and scope of this subpart.

This subpart sets forth EPA's administrative process for the rapid resolution of protest appeals filed with the award official.

§ 33.1110 Recipient protest procedures.

(a) Recipients must establish their own procedures for prompt consideration of initial protests concerning their solicitations or subagreement awards. A "protest" is a written complaint concerning the recipient's solicitation or award of a subagreement. It must be filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action (see § 33.1130 "Review of protest appeal").

(b) The recipient should review each protest received to determine whether it is appropriate to defer the protested procurement action.

(c) If the recipient does not defer the procurement action, it assumes the risk that the award official may disallow the cost of the protested procurement action if the protest appeal is upheld.

(48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983)

§ 33.1115 Protest appeal.

(a) A party with a financial interest which is adversely affected by the recipient's decision on the initial protest may file a "protest appeal" with the award official.

(b) A "protest appeal" is a written complaint filed with the award official regarding the recipient's determination of a protest.

§ 33.1120 Limitations on protest appeals.

(a) The award official shall not accept a protest appeal until the protester has exhausted all administrative remedies at the recipient level.

(b) A protest appeal is limited to the following:

(1) Issues arising under the procurement provisions of this part, or

(2) Alleged violations of State or local law or ordinances where the award official determines that there is an overriding Federal requirement.

(c) A recipient of a lower tier subagreement (subcontract) may only file a protest appeal for issues which relate to the award of a subagreement by a contractor (see § 33.295 "Subagreements awarded by a contractor").

§ 33.1125 Filing requirements.

(a) Protest appeals must be filed with the Assistant General Counsel for Grants for headquarters-awarded assistance agreements and with the Office of Regional Counsel for regionally awarded assistance agreements.

(b) A protest appeal must:

(1) Be written;

(2) Include a copy of the recipient's determination of the protest;

(3) State the basis for the appeal; and

(4) Request a determination under this subpart.

(c) Upon filing a protest appeal with the Regional Counsel or Assistant General Counsel for Grants, as appropriate, the party filing the protest appeal must concurrently transmit a copy of all protest documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest appeal.

(d) The award official will only consider written protest appeals received by the appropriate Counsel's office within seven calendar days after the adversely affected party receives the recipient's determination of protest. However, the adversely affected party can meet the seven-day notice requirement by telegraphing the Counsel within the seven-calendar-day period of its intent to file a protest appeal, provided the adversely affected party submits a complete protest appeal within seven calendar days of the date it sends the telegram. If the seventh day falls on a Saturday, Sunday or holiday, the next working day shall be the last day to submit a protest appeal.

§ 33.1130

(e) Any party which submits a document to the award official during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.1130 Review of protest appeal.

(a) If the recipient does not receive the initial protest before bid opening or the closing date for receipt of proposals, the award official may dismiss as untimely any protest appeal based upon alleged improprieties in the solicitation which were clearly apparent before bid opening or before the deadline for receipt of initial proposals. In negotiated procurements, protests of alleged improprieties which were incorporated in a new solicitation must have been received by the recipient by the closing date for receipt of proposals for the new solicitation.

(b) In cases not involving improprieties in the solicitation, the award official may dismiss as untimely a protest appeal if the adversely affected party did not file the initial protest with the recipient within seven calendar days of the date the basis for the protest was known or should have been known, whichever is earlier.

§ 33.1140 Deferral of procurement action.

When the award official receives a protest appeal and the recipient has not deferred the procurement action under § 33.1110(b), the award official must promptly request that the recipient defer the protested procurement action until the award official notifies the recipient of the formal or informal resolution of the appeal. The request shall be limited to the award of the subagreement or subitem which is the basis of the protest appeal.

§ 33.1145 Award official's review.

(a) The award official may establish rules of procedures or deadlines for the submission of materials or the arrangement of protest appeal conferences.

(b) The award official may summarily dismiss an appeal without proceedings under this subpart if:

(1) The protest appeal is not reviewable, see § 33.1130, or addresses

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issues other than those allowed under § 33.1120(b);

(2) The protester substantially fails to comply with the procedural requirements of this subpart; or

(3) The protester does not agree to the recipient's request for a reasonable extension of the bid and bond period.

(c) The award official may summarily deny a protest appeal without proceedings under this subpart if, after considering the facts in a light most favorable to the protester, the award official believes that the protest lacks merit.

(d) The award official will give both the recipient and the protester, as well as any other party with a financial interest which may be adversely affected by the determination of protest, an opportunity to present arguments in support of their views in writing or at a conference.

(e) After the announced date for receipt of written arguments, the record shall be closed.

(f) The award official shall review the record considered by the recipient and any other documents or arguments presented by the parties to determine whether the recipient has complied with the procurement requirements of this part and has a rational basis for its determination of protest.

(g) The award official's determination shall constitute final EPA action from which there shall be no further administrative appeal. No party may appeal an award official's determination of appeal to the EPA Board of Assistance Appeals.

(h) Nothing in this subpart precludes the award official from reviewing the recipient's procurement action. (See § 33.115.)

(i) Noncompliance with the award official's determination of protest shall be cause for an action against the recipient under 40 CFR Part 30 or 32.

(j) If an appeal involves legal issues not explicitly addressed by this part, the award official shall resolve the issue by referring to other protest determinations under this section and decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this part.

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Subpart C—Requirements for Recipients of Assistance Agreements for the Construction of Treatment Works

§ 33.705 Applicability and scope of this subpart.

Recipients of assistance agreements awarded under 40 CFR Part 35, Subparts E and I must comply with the following requirements.

§ 33.710 Buy American.

Section 215 of the Clean Water Act requires that contractors give preference for the use of domestic material in the construction of EPA funded treatment works.

(a) Contractors must use domestic construction material in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The recipient will normally base the computations on prices and costs in effect on the date of opening of bids or proposals.

(b) The award official may waive the Buy American provision based upon factors he considers relevant, including:

- (1) Such use is not in the public interest;
- (2) The cost is unreasonable;

(3) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(4) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(5) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(c) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the "Buy American" provision in § 33.1030.

§ 33.715 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for the project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(1) The recipient received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(2) The award official approves non-competitive procurement under § 33.605(d) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(3) The recipient attests that:

(i) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(ii) The firm or individual was selected for facilities planning or design services in accordance with procedures in:

(A) Section 33.230 "Competition," and

(B) Section 33.250(a)(1), (a)(2) & (a)(3), and (b) "Documentation," and one of the following:

(C) Section 33.305 through 33.315 "Small Purchases," or

(D) Section 33.405 through 33.430 "Formal Advertising;" or

(E) Section 33.505 through 33.525 "Competitive Negotiation."

(iii) No employee, officer or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(b) However, if the recipient uses the procedures in paragraph (a) to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the recipient must meet all of the other procurement provisions in this part.

§ 33.220 Limitation of subagreement award.

(a) The recipient shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. A responsible contractor is one that has:

(1) Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

(2) Resources to meet the completion schedule contained in the subagreement;

(3) A satisfactory performance record for completion of subagreements;

(4) Accounting and auditing procedures adequate to control property, funds and assets, as required in this part and 40 CFR Part 30; and

(5) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under 40 CFR Part 30.

(b) The recipient shall not make awards to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32 nor shall it permit any portion of the work required by the subagreement to be performed at any facility listed on the EPA List of Violating Facilities (see 40 CFR Part 15).

§ 33.235 Profit.

(a) Recipients must assure that only fair and reasonable profits are paid to contractors awarded subagreements under EPA assistance agreements.

(b) The recipient shall negotiate profit as a separate element of price for each subagreement in which there is no price competition, or where price is based on cost analysis.

(c) Where the recipient receives two or more bids, profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(d) Off-the-shelf or catalog supplies are exempt from this section.

§ 33.240 Small, minority, women's, and labor surplus area businesses.

(a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction and services. Affirmative steps shall include the following:

(1) Including qualified small, minority, and women's businesses on solicitation lists;

(2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses;

(4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses;

(5) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and

(6) If the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (a)(1) through (a)(5) of this section.

(b) (Reserved)

(c) EPA encourages recipients to procure supplies and services from labor surplus area firms.

§ 33.255 Specifications.

(a) Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition, unless the features are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment or to promote innovative technologies. The description

shall include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

(b) The recipient shall avoid the use of detailed product specifications if at all possible.

(c) When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a "brand name or equal" description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must clearly state in the specification the salient requirements of the named brand which must be met by offerors. (An additional specification requirement for recipients of assistance for the construction of treatment works under 40 CFR Part 35, Subparts E and I is contained in § 33.710.)

§ 33.275 Federal cost principles.

The following cost principles apply to assistance agreements and subagreements:

(a) State and local governments must comply with OMB Circular A-87 to determine allowable costs.

(b) Educational institutions must comply with OMB Circular A-21 to determine allowable costs and with OMB Circular A-88 for indirect cost rates.

(c) Nonprofit institutions must comply with OMB Circular A-122 to determine allowable costs.

(d) All other recipients, contractors and subcontractors must comply with the cost principles contained in the Federal Procurement Regulations (41 CFR 1-15.2 and, if appropriate, § 1-15.4) to determine allowable costs.

§ 33.285 Prohibited types of subagreements.

The cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) and the percentage-of-construction-cost types of subagreements shall not be used.

§ 33.290 Cost and price considerations.

(a) The recipient shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed \$10,000.

(b) The recipient shall conduct a price analysis of all formally advertised procurements estimated to exceed \$10,000 if there are fewer than three bidders.

(c) For negotiated procurement, contractors and subcontractors shall submit cost or pricing data in support of their proposals to the recipient.

§ 33.295 Subagreements awarded by a contractor.

A contractor must comply with the following provisions in its award of subagreements. (This section does not apply to a supplier's procurement of materials to produce equipment, materials and catalog, off-the-shelf, or manufactured items.)

(a) 40 CFR Part 32 (Debarment and Suspension Under EPA Assistance Programs);

(b) The limitations on subagreement award in § 33.220 (a)(1) through (a)(5);

(c) The profit requirements in § 33.235;

(d) The requirements for small, minority, women's and labor surplus area businesses in § 33.240;

(e) The specification requirements of § 33.255;

(f) The requirements of Subpart C of this part, if appropriate;

(g) The Federal cost principles in § 33.275;

(h) The prohibited types of subagreements in § 33.285;

(i) The cost and price considerations in § 33.290, and

(j) The applicable subagreement provisions in Subpart F of this part.

Chapter I—Environmental Protection Agency

§ 35.936-5

§ 35.936-1 Definitions.

As used in §§ 35.936 through 35.939, the following words and terms shall have the meaning set forth below. All terms not defined herein shall have the meaning given to them in § 30.135 of this subchapter, and in § 35.905.

(a) *Grant agreement.* The written agreement and amendments thereto between EPA and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties under § 30.345 of this subchapter.

(b) *Subagreement.* A written agreement between an EPA grantee and another party (other than another public agency) and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts and subcontracts for personal and professional services, agreements with consultants and purchase orders, but excluding employment agreements subject to State or local personnel systems. (See §§ 35.937-12 and 35.938-9 regarding subcontracts of any tier under prime contracts for architectural or engineering services or construction awarded by the grantee—generally applicable only to subcontracts in excess of \$10,000.)

(c) *Contractor.* A party to whom a subagreement is awarded.

(d) *Grantee.* Any municipality which has been awarded a grant for construction of a treatment works under this subpart. In addition, where appropriate in §§ 35.936 through 35.939, grantee may also refer to an applicant for a grant.

§ 35.936-2 Grantee procurement systems; State or local law.

(a) *Grantee procurement systems.* Grantees may use their own procurement systems and procedures which meet applicable requirements of State, territorial, or local laws and ordinances to the extent that these systems and procedures do not conflict with the minimum requirements of this subchapter.

(b) *State or local law.* The Regional Administrator will generally rely on a grantee's determination regarding the application of State or local law to

issues which are primarily determined by such law. The Regional Administrator may request the grantee to furnish a written legal opinion adequately addressing any such legal issues. The Regional Administrator will accept the grantee's determination unless he finds that it does not have a rational basis.

(c) *Preference.* State or local laws, ordinances, regulations or procedures which effectively give local or in-State bidders or proposers preference over other bidders or proposers shall not be employed in evaluating bids or proposals for subagreements under a grant.

§ 35.936-3 Competition.

EPA's policy is to encourage free and open competition appropriate to the type of project work to be performed.

§ 35.936-4 Profits.

Only fair and reasonable profits may be earned by contractors in subagreements under EPA grants. See § 35.937-7 for discussion of profits under negotiated subagreements for architectural or engineering services, and § 35.938-5(f) for discussion of profits under negotiated change orders to construction contracts. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded under § 35.938 is presumed reasonable.

§ 35.936-5 Grantee responsibility.

(a) The grantee is responsible for the administration and successful accomplishment of the project for which EPA grant assistance is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant (except as § 35.936-6 provides) in accordance with sound business judgment and good administrative practice. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other related procurement matters.

(b) With the prior written approval of the Regional Administrator, the grantee may retain an individual or

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§ 35.936 Procurement.

(a) Sections 35.936 through 35.939 set forth policies and minimum standards for procurement of architectural or engineering services as defined in § 35.937 and construction contracts as described in § 35.938 by grantees under all steps of grants for construction of treatment works. Acquisition of real property shall be conducted in accordance with Part 4, Subpart F of this chapter. Other procurements of goods and services shall be conducted in accordance with the provisions of Part 33 of this subchapter.

(b) This subpart does not apply to work beyond the scope of the project for which grant assistance is awarded (i.e., ineligible work).

firm to perform these functions. Such an agent acts for the grantee and is subject to the provisions of this subpart which apply to the grantee.

(c) In accordance with § 35.970, a grantee may request technical and legal assistance from the Regional Administrator for the administration and enforcement of any contract related to treatment works that are assisted by an EPA grant. The Regional Administrator's assistance does not release the grantee from those responsibilities identified in paragraph (a) of this section.

§ 35.936-6 EPA responsibility.

Generally, EPA will only review grantee compliance with Federal requirements applicable to a grantee's procurement. However, where specifically provided in this chapter (e.g., §§ 8.8(j) and 35.939), EPA is responsible for determining compliance with Federal requirements.

§ 35.936-7 Small and minority business.

Grantees shall make positive efforts to use small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for subagreements to be performed using Federal grant funds.

§ 35.936-8 Privy of contract.

Neither EPA nor the United States shall be a party to any subagreement (including contracts or subcontracts), nor to any solicitation or request for proposals. (See §§ 35.937-9(a), 35.938-4(c)(5), and Appendixes C-1 and C-2 to this subpart for the required solicitation statement and contract provisions.) However, in accordance with § 35.970 the Regional Administrator, if a grantee requests, may provide technical and legal assistance in the administration and enforcement of any contract related to treatment works for which an EPA grant was made.

§ 35.936-9 Disputes.

Only an EPA grantee may initiate and prosecute an appeal to the Administrator under the disputes provision of a grant with respect to its subagreements (see Subpart J of Part 30 of this

subchapter). Neither a contractor nor a subcontractor may prosecute an appeal under the disputes provisions of a grant in its own name or interest.

§ 35.936-10 Federal procurement regulations.

Regulations applicable to direct Federal procurement shall not be applicable to subagreements under grants except as stated in this subchapter.

§ 35.936-11 General requirements for subagreements.

Subagreements must:

- (a) Be necessary for and directly related to the accomplishment of the project work;
- (b) Be in the form of a bilaterally executed written agreement (except for small purchases of \$10,000 or less);
- (c) Be for monetary or in-kind consideration; and
- (d) Not be in the nature of a grant or gift.

§ 35.936-12 Documentation.

(a) Procurement records and files for purchases in excess of \$10,000 shall include the following:

- (1) Basis for contractor selection;
- (2) Justification for lack of competition if competition appropriate to the type of project work to be performed is required but is not obtained; and
- (3) Basis for award cost or price.

(b) The grantee or contractors of the grantee must retain procurement documentation required by § 30.805 of this subchapter and by this subpart, including a copy of each subagreement, for the period of time specified in § 30.805. The documentation is subject to all the requirements of § 30.805. A copy of each subagreement must be furnished to the project officer upon request.

§ 35.936-13 Specifications.

(a) *Nonrestrictive specifications.* (1) No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific

thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal." If brand or trade names are specified, the grantee must be prepared to identify to the Regional Administrator or in any protest action the salient requirements (relating to the minimum needs of the project) which must be met by any offeror. The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the grantee must be prepared to substantiate the basis for the selection of the material.

(2) Project specifications shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, except to the extent that innovative technologies may be used under § 35.908 of this subpart.

(b) *Sole source restriction.* A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless the Regional Administrator determines that the grantee's engineer has adequately justified in writing that the proposed use meets the particular project's minimum needs or the Regional Administrator determines that use of a single source is necessary to promote innovation (see § 35.908). Sole source procurement must be negotiated under § 33.500 et seq., including full cost review.

(c) *Experience clause restriction.* The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the grantee's engineer adequately justifies any such requirement in writing. Where such justification has been

made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required should not exceed the experience period specified. No experience restriction will be permitted which unnecessarily reduces competition or innovation.

(d) *Buy American—(1) Definitions.* As used in this subpart, the following definitions apply:

(i) "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work.

(ii) "Component" means any article, material, or supply directly incorporated in construction material.

(iii) "Domestic construction material" means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(iv) "Nondomestic construction material" means a construction material other than a domestic construction material.

(2) *Domestic preference.* Domestic construction material may be used in preference to nondomestic materials if it is priced no more than 8 percent higher than the bid or offered price of the nondomestic materials including all costs of delivery to the construction site, any applicable duty, whether or not assessed. Computations will normally be based on costs on the date of opening of bids or proposals.

(3) *Waiver.* The Regional Administrator may waive the Buy American provision based upon those factors that he considers relevant, including:

(i) Such use is not in the public interest;

(ii) The cost is unreasonable;

(iii) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(iv) The articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies

from which they are manufactured are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(v) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(4) **Contract provision.** Notwithstanding any other provision of this subpart, bidding documents and construction contracts for any step 3 project for which the Regional Administrator receives an application after February 1, 1978, shall contain the "Buy American" provision which requires use of domestic construction materials in preference to nondomestic construction materials.

(5) **Substitution.** If a nondomestic construction material or component is proposed for use, a bidder or contractor may substitute an approved domestic material or component (at no change in price), if necessary to comply with this subsection.

(6) **Procedures.** The Regional Administrator may use the appropriate procedures of § 35.939 in making the determinations with respect to this subsection. He shall generally observe the Buy American procedures, regulations, precedents, and requirements of other Federal departments and agencies.

(43 FR 44049, Sept. 27, 1978, as amended at 44 FR 37596, June 27, 1979; 44 FR 39340, July 5, 1979)

NOTE: For a class deviation document affecting § 35.936-13(a), see 47 FR 4066, Jan. 28, 1982.

§ 35.936-14 Force account work.

(a) A grantee must secure the project officer's prior written approval for use of the force account method for (1) any step 1 or step 2 work in excess of \$10,000; (2) any sewer rehabilitation work in excess of \$25,000 performed during step 1 (see § 35.927-3(a)); or (3) any step 3 work in excess of \$25,000; unless the grant agreement stipulates the force account method.

(b) The project officer's approval shall be based on the grantee's demonstration that he possesses the necessary competence required to accom-

plish such work and that (1) the work can be accomplished more economically by the use of the force account method, or (2) emergency circumstances dictate its use.

(c) Use of the force account method for step 3 construction shall generally be limited to minor portions of a project.

§ 35.936-15 Limitations on subagreement award.

No subagreement shall be awarded:

(a) To any person or organization which does not meet the responsibility standards in § 30.340-2 (a) through (d) and (g) of this subchapter;

(b) If any portion of the contract work not exempted by § 30.420-3(b) of this subchapter will be performed at a facility listed by the Director, EPA Office of Federal Activities, in violation of the antipollution requirements of the Clean Air Act and the Clean Water Act, as set forth in § 30.420-3 of this subchapter and 40 CFR, Part 15 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans); or

(c) To any person or organization which is ineligible under the conflict of interest requirements of § 30.420-4 of this subchapter.

§ 35.936-16 Code or standards of conduct.

(a) The grantee must maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in the conduct of project work, including procurement and expenditure of project funds. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. The grantee must avoid personal or organizational conflicts of interest or noncompetitive procurement practices which restrict or eliminate competition or otherwise restrain trade.

(b) To the extent permissible by State or local law or formal institutional requirements and procedures, the standards shall provide for penalties, sanctions, or other adequate disciplinary actions to be instituted for

project-related violations of law or of the code or standards of conduct by either the grantee officers, employees, or agents, or by contractors or their agents.

(c) The grantee must inform the project officer in writing of each serious allegation of a project-related violation and of each known or proven project-related violation of law or code or standards of conduct, by its officers, employees, contractors, or by their agents. The grantee must also inform the project officer of the prosecutive or disciplinary action the grantee takes, and must cooperate with Federal officials in any Federal prosecutive or disciplinary action. Under § 30.245 of this subchapter, the project officer must notify the Director, EPA Security and Inspection Division, of all notifications from the grantee.

(d) EPA shall cooperate with the grantee in its disciplinary or prosecutive actions taken for any apparent project-related violations of law or of the grantee's code or standards of conduct.

§ 35.936-17 Fraud and other unlawful or corrupt practices.

All procurements under grants are covered by the provisions of § 30.245 of this subchapter relating to fraud and other unlawful or corrupt practices.

§ 35.936-18 Negotiation of subagreements.

(a) Formal advertising, with adequate purchase descriptions, sealed bids, and public openings shall be the required method of procurement unless negotiation under paragraph (b) of this section is necessary to accomplish sound procurement.

(b) All negotiated procurement shall be conducted in a manner to provide to the maximum practicable extent open and free competition appropriate to the type of project work to be performed. The grantee is authorized to negotiate subagreements in accordance with the applicable procedures of this subchapter (see §§ 35.937 et seq. and 35.500 et seq.) if any of the following conditions exist:

(1) Public exigency will not permit the delay incident to formally advertised procurement (e.g., an emergency procurement).

(2) The aggregate amount involved does not exceed \$10,000 (see § 35.936-19 for small purchases).

(3) The material or service to be procured is available from only one person or entity. If the procurement is expected to aggregate more than \$10,000, the grantee must document its file with a justification of the need for noncompetitive procurement, and provide such documentation to the project officer on request.

(4) The procurement is for personal or professional services (including architectural or engineering services) or for any service that a university or other educational institution may render.

(5) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and, with respect to procurement under § 35.938-4, the Regional Administrator's prior written approval has been obtained.

(6) The procurement is for materials or services where the prices are established by law.

(7) The procurement is for technical items or equipment requiring standardization and interchangeability of parts with existing equipment.

(8) The procurement is for experimental, developmental or research services.

§ 35.936-19 Small purchases.

(a) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed \$10,000. The small purchase limitation of \$10,000 applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, all items which should properly be grouped together must be included. Reasonable competition shall be obtained.

(b) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like

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may be used to minimize paperwork. Retention in the purchase files of these documents and of written quotations received, or references to catalogs or printed price lists used, will suffice as the record supporting the price paid.

§ 35.936-20 Allowable costs.

(a) Incurring costs under subagreements which are not awarded or administered in compliance with this part or Part 33 of this subchapter, as appropriate, shall be cause for disallowance of those costs.

(b) Appropriate cost principles which apply to subagreements under EPA grants are identified in § 30.710 of this subchapter. Under that section, the contractor's actual costs, direct and indirect, eligible for Federal participation in a cost reimbursement contract shall be those allowable under the applicable provisions of 41 CFR 1-15.2 (Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations) and 41 CFR 1-15.4 (Construction and Architect-Engineer Contracts).

(c) Reasonable costs of compliance with the procurement and project management requirements of these regulations are allowable costs of administration under the grant. Costs of announcement, selection, negotiation, and cost review and analysis in connection with procurement of architectural or engineering services are allowable, even when conducted before award of the grant. Legal and engineering costs which a grantee is required to incur in a protest action under § 35.939 are allowable.

§ 35.936-21 Delegation to State agencies; certification of procurement systems.

(a) Under § 35.912 and Subpart F of this part, the Regional Administrator may delegate authority to a State agency to review and certify the technical and administrative adequacy of procurement documentation required under these sections.

(b) If a State agency believes that State laws which govern municipal procurement include the same requirements or operate to provide the same protections as do §§ 35.936, 35.937 and

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35.938, the State may request the Administrator to approve the State system instead of the procedures of these sections. EPA shall review the State system to determine its adequacy.

(c) If a State agency determines that an applicant's procurement ordinances or applicable statutes include the same requirements or operate to provide the same protections as do §§ 35.936, 35.937 and 35.938, the State may certify (accompanied by appropriate documentation) the adequacy of the municipality's ordinances and statutes and request the Administrator to approve the municipality's system instead of the procedures of these sections. EPA shall conduct or may request the State to conduct a review of the municipality's system to determine its adequacy.

§ 35.936-22 Bonding and insurance.

(a) On contracts for the building and erection of treatment works or contracts for sewer system rehabilitation exceeding \$100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition, the contractor awarded a construction contract for the building and erection of treatment works or sewer system rehabilitation must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. Construction contracts less than \$100,000 shall be subject to State and local requirements for bid guarantees, performance bonds, and payment bonds. For contracts or subcontracts in excess of \$100,000 the Regional Administrator may authorize the grantee to use its own bonding policies and requirements if he determines, in writing, that the Government's interest is adequately protected.

(b) Contractors should obtain such construction insurance (e.g., fire and extended coverage, workmen's compensation, public liability and property damage, and "all risk" builder's risk or installation floater coverage) as is required by State or local law or the grantee or as is customary and appropriate. Under the Flood Disaster Protection Act of 1973, a contractor must

purchase flood insurance to cover his risk of loss if the grantee has not purchased the insurance (see § 30.405-10 of this subchapter).

§ 35.938 Construction contracts (subagreements) of grantees.

§ 35.938-1 Applicability.

This section applies to construction contracts (subagreements) in excess of \$10,000 awarded by grantees for any step 3 project.

§ 35.938-2 Performance by contract.

The project work shall be performed under one or more contracts awarded by the grantee to private firms, except for force account work authorized by § 35.936-14.

§ 35.938-3 Type of contract.

Each contract shall be a fixed price (lump sum or unit price or a combination of the two) contract, unless the Regional Administrator gives advance written approval for the grantee to use some other acceptable type of contract. The cost-plus-percentage-of-cost contract shall not be used in any event.

§ 35.938-4 Formal advertising.

Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with § 35.938-18. Formal advertising shall be in accordance with the following:

(a) *Adequate public notice.* The grantee will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation beyond the grantee's locality (statewide, generally), inviting bids on the project work, and stating the method by which bidding documents may be obtained or examined. Where the estimated cost of step 3 construction is \$10 million or more, the grantee must generally publish the notice in trade journals of nationwide distribution. The grantee should, in addition, solicit bids directly from bidders if it maintains a bidders list.

(b) *Adequate time for preparing bids.* Adequate time, generally not less than 30 days, must be allowed between the date when public notice under paragraph (a) of this section is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published.

(c) *Adequate bidding documents.* The grantee shall prepare a reasonable number of bidding documents (invitations for bids) and shall furnish them upon request on a first-come, first-served basis. The grantee shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include:

(1) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection and purchase, instead of being furnished.);

(2) The terms and conditions of the contract to be awarded;

(3) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;

(4) Responsibility requirements or criteria which will be employed in evaluating bidders;

(5) The following statement:

Any contract or contracts awarded under this invitation for bids are expected to be funded in part by a grant from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is or will be a party to this invitation for bids or any resulting contract. This procurement will be subject to regulations contained in 40 CFR 35.936, 35.938, and 35.939;

and

(6) A copy of §§ 35.936, 35.938, and 35.939.

(d) *Sealed bids.* The grantee shall provide for bidding by sealed bid, and for the safeguarding of bids received until public opening.

(e) *Addenda to bidding documents.* If a grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time.

(f) *Bid modifications.* A firm which has submitted a bid, shall be allowed to modify or withdraw its bid before the time of bid opening.

(g) *Public opening of bids.* The grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

(h) *Award to the low, responsive, responsible bidder.* (1) After bids are opened, the grantee shall evaluate them in accordance with the methods and criteria set forth in the bidding documents.

(2) The grantee may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the low, responsive, responsible bidder.

(3) If the grantee intends to make the award to a firm which did not submit the lowest bid, he shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsive or nonresponsive, and shall retain it in his files.

(4) State or local laws, ordinances, regulations or procedures which are designed or which operate to give local or in-State bidders preference over other bidders shall not be employed in evaluating bids.

(5) If an unresolved procurement review issue or a protest relates only to award of a subcontract or procurement of a subitem under the prime contract, and resolution of that issue or protest is unduly delaying performance of the prime contract, the Regional Administrator may authorize award and performance of the prime contract before resolution of the issue or protest, if the Regional Administrator determines that:

(i) Resolution of the protest—

(A) Will not affect the placement of the prime contract bidders; and

(B) Will not materially affect initial performance of the prime contract; and that

(ii) Award of the prime contract—

(A) Is in the Government's best interest;

(B) Will not materially affect resolution of the protest; and

(C) Is not barred by State law.

(6) The grantee shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of a subcontractor(s) or equipment, unless the grantee has unambiguously stated in the solicitation documents that such failure to list shall render a bid nonresponsive and shall cause rejection of a bid.

§ 35.938-5 Negotiation of contract amendments (change orders).

(a) *Grantee responsibility.* Grantees are responsible for negotiation of construction contract change orders. This function may be performed by the grantee directly or, if authorized, by his engineer. During negotiations with the contractor the grantee shall:

(1) Make certain that the contractor has a clear understanding of the scope and extent of work and other essential requirements;

(2) Assure that the contractor demonstrates that he will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and

(3) Assure a fair and reasonable price for the required work.

(b) *Changes in contract price or time.* The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with paragraph (c) or (d) of this section, as appropriate. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the method set forth in paragraphs (b)(1) through (b)(3) of this section which is most advantageous to the grantee.

(1) *Unit prices—(i) Original bid items.* Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed 15 percent of the original bid quantity and the total dollar change of that bid item is significant, the grantee shall review the unit price to determine if a new unit price should be negotiated.

(ii) *New items.* Unit prices of new items shall be negotiated.

(2) A lump sum to be negotiated.

(3) *Cost reimbursement*—the actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work, plus an amount to be agreed upon to cover the cost of general overhead and profit to be negotiated.

(c) For each change order not in excess of \$100,000 the contractor shall submit sufficient cost and pricing data to the grantee to enable the grantee to determine the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

(d) For each change order in excess of \$100,000, the contractor shall submit to the grantee for review sufficient cost and pricing data as described in paragraphs (d)(1) through (d)(6) of this section to enable the grantee to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

(1) As a minimum, proposed change order costs shall be presented on EPA Form 5700-41 on which the contractor shall certify that proposed costs reflect complete, current, and accurate

cost and pricing data applicable to the date of the change order.

(2) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price change orders and a specific total dollar amount of profit will be set forth separately in the cost summary for cost reimbursement change orders.

(3) The grantee may require more detailed cost data than the form requires in order to substantiate the reasonableness of proposed change order costs. EPA normally requires more detailed documentation only when the contractor is unable to certify that proposed change order cost data are complete, current, and accurate. EPA may, on a selected basis, perform a detailed cost analysis on any change order.

(4) Appropriate consideration should be given to § 30.710 of this subchapter which contains general cost principles which must be used for the determination and allowability of costs under grants. The contractor's actual costs, direct and indirect, allowable for Federal participation shall be determined in accordance with the terms and conditions of the contract, this subpart and the cost principles included in 41 CFR 1-15.2 and 1-15.4. Examples of costs which are not allowable under those cost principles include, but are not limited to, entertainment, interest on borrowed capital and bad debts.

(5) For costs under cost reimbursement change orders, the contractor shall have an accounting system which accounts for such costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable change orders. Allowable change order costs shall be determined in accordance with paragraph (d)(4) of this section. The contractor must propose and account for such costs in a manner consistent with his normal accounting procedures.

(6) Change orders awarded on the basis of review of a cost element summary and a certification of complete, current, and accurate cost and pricing data shall be subject to downward renegotiation or recoupment of funds

where subsequent audit substantiates that such certification was not based on complete, current and accurate cost and pricing data and on costs allowable under the appropriate FPR cost principles (41 CFR 1-15.2 and 1-15.4) at the time of change order execution.

(e) *EPA review.* In addition to the requirements of §§ 35.935-10 (copies of contract documents) and 35.935-11 (project changes), the grantee shall submit, before the execution of any change order in excess of \$100,000, to the EPA Project Officer for review:

(1) The cost and pricing data the contractor submitted;

(2) A certification of review and acceptance of the contractor's cost or price; and

(3) A copy of the proposed change order.

(f) *Profit.* The objective of negotiations shall be the exercise of sound business judgment and good administrative practice including the determination of a fair and reasonable profit based on the contractor's assumption of risk and input to total performance and not merely the application of a predetermined percentage factor. For the purpose of negotiated change orders to construction contracts under EPA grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. The grantee should review the estimate or profit as he reviews all other elements of price.

(g) *Related work.* Related work shall not be split into two amendments or change orders merely to keep it under \$100,000 and thereby avoid the requirements of paragraph (d) of this section. For change orders which include both additive and deductive items:

(1) If any single item (additive or deductive) exceeds \$100,000, the requirements of paragraph (d) of this section shall be applicable.

(2) If no single additive or deductive item has a value of \$100,000, but the total price of the change order is over \$100,000, the requirements of paragraph (d) of this section shall be applicable.

(3) If the total of additive items of work in the change order exceeds \$100,000, or the total of deductive

items of work in the change order exceeds \$100,000, and the net price of the change order is less than \$100,000, the requirements of paragraph (d) of this section shall apply.

§ 35.938-6 Progress payments to contractors.

(a) *Policy.* EPA policy is that, except as State law otherwise provides, grantees should make prompt progress payments to prime contractors and prime contractors should make prompt progress payment to subcontractors and suppliers for eligible construction, material, and equipment costs, including those of undelivered specifically manufactured equipment, incurred under a contract under an EPA construction grant.

(b) *Conditions of progress payments.* For purposes of this section, progress payments are defined as follows:

(1) Payments for work in place.

(2) Payments for materials or equipment which have been delivered to the construction site, or which are stockpiled in the vicinity of the construction site, in accordance with the terms of the contract, when conditional or final acceptance is made by or for the grantee. The grantee shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures. Costs of such insurance and security are allowable costs in accordance with § 35.940.

(3) Payments for undelivered specifically manufactured items or equipment (excluding off-the-shelf or catalog items), as work on them progresses. Such payments must be made if provisions therefor are included in the bid and contract documents. Such provisions may be included at the option of the grantee only when all of the following conditions exist:

(i) The equipment is so designated in the project specifications;

(ii) The equipment to be specifically manufactured for the project could not be readily utilized on nor diverted to another job; and

(iii) A fabrication period of more than 6 months is anticipated.

(c) *Protection of progress payments made for specifically manufactured equipment.* The grantee will assure

protection of the Federal interest in progress payments made for items or equipment referred to in paragraph (b)(3) of this section. This protection must be acceptable to the grantee and must take the form of:

(1) Securities negotiable without recourse, condition or restrictions, a progress payment bond, or an irrevocable letter of credit provided to the grantee through the prime contractor by the subcontractor or supplier; and,

(2) For items or equipment in excess of \$200,000 in value which are manufactured in a jurisdiction in which the Uniform Commercial Code is applicable, the creation and perfection of a security interest under the Uniform Commercial Code reasonably adequate to protect the interests of the grantee.

(d) *Limitations on progress payments for specifically manufactured equipment.* (1) Progress payments made for specifically manufactured equipment or items shall be limited to the following:

(i) A first payment upon submission by the prime contractor of shop drawings for the equipment or items in an amount not exceeding 15 percent of the contract or item price plus appropriate and allowable higher tier costs; and

(ii) Subsequent to the grantee's release or approval for manufacture, additional payments not more frequently than monthly thereafter up to 75 percent of the contract or item price plus appropriate and allowable higher tier costs. However, payment may also be made in accordance with the contract and grant terms and conditions for ancillary onsite work before delivery of the specifically manufactured equipment or items.

(2) In no case may progress payments for undelivered equipment or items under paragraph (d)(1)(i) or (d)(1)(ii) of this section be made in an amount greater than 75 percent of the cumulative incurred costs allocable to contract performance with respect to the equipment or items. Submission of a request for any such progress payments must be accompanied by a certification furnished by the fabricator of the equipment or item that the amount of progress payment claimed constitutes not more than 75 percent

of cumulative incurred costs allocable to contract performance, and in addition, in the case of the first progress payment request, a certification that the amount claimed does not exceed 15 percent of the contract or item price quoted by the fabricator.

(3) As used in this section, the term "costs allocable to contract performance" with respect to undelivered equipment or items includes all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices consistently applied, and which are not excluded by the contract.

(e) **Enforcement.** A subcontractor or supplier which is determined by the Regional Administrator to have frustrated the intent of the provisions regarding progress payments for major equipment or specifically manufactured equipment through intentional forfeiture of its bond or failure to deliver the equipment may be determined nonresponsible and ineligible for further work under EPA grants.

(f) **Contract provisions.** Where applicable, appropriate provisions regarding progress payments must be included in each contract and subcontract. Grantees must use clauses acceptable to the EPA Regional Administrator.

(g) **Implementation.** The foregoing progress payments policy should be implemented in invitations for bids under step 3 grants. If provision for progress payments is made after contract award, it must be for consideration that the grantee deems adequate.

§ 35.938-7 Retention from progress payments.

(a) The grantee may retain a portion of the amount otherwise due the contractor. Except as State law otherwise provides, the amount the grantee retains shall be limited to the following:

(1) Withholding of not more than 10 percent of the payment claimed until work is 50 percent complete;

(2) When work is 50 percent complete, reduction of the withholding to 5 percent of the dollar value of all work satisfactorily completed to date, provided that the contractor is making

satisfactory progress and there is no specific cause for greater withholding;

(3) When the work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below 5 percent to only that amount necessary to assure completion.

(4) The grantee may reinstate up to 10 percent withholding if the grantee determines, at its discretion, that the contractor is not making satisfactory progress or there is other specific cause for such withholding.

(5) The grantee may accept, securities negotiable without recourse, condition or restrictions, a release of retainage bond, or an irrevocable letter of credit provided by the contractor instead of all or part of the cash retainage.

(b) The foregoing retention policy shall be implemented with respect to all step 3 projects for which plans and specifications are approved after March 1, 1976. Appropriate provision to assure compliance with this policy must be included in the bid documents for such projects initially or by addendum before the bid submission date, and as a special condition in the grant agreement or in a grant amendment. For all previous active projects, the grantee may implement the foregoing policy through contract amendment upon written request to the grantee by the contractor upon consideration that the grantee deems adequate.

(c) Under § 30.620-3 of this subchapter, a grantee who delays disbursement of grant funds will be required to credit to the United States all interest earned on those funds.

§ 35.938-8 Required construction contract provisions.

Each construction contract must include the "Supplemental General Conditions" set forth in Appendix C-2 to this subpart.

§ 35.938-9 Subcontracts under construction contracts.

(a) The award or execution of subcontracts by a prime contractor under a construction contract awarded to the prime contractor by the grantee, and the procurement and negotiation pro-

cedures used by prime contractors in awarding or executing subcontracts are not required to comply with any of the provisions, selection procedures, policies or principles set forth in § 35.936 or § 35.938 except those specifically stated in this section. In addition, the bid protest procedures of § 35.939 are not available to parties executing subcontracts with prime contractors except as specifically provided in that section.

(b) The award or execution of subcontracts by a prime contractor under a formally advertised, competitively bid, fixed price construction contract awarded to the prime contractor by the grantee, and the procurement and negotiation procedures used by such prime contractors in awarding or executing such subcontracts must comply with the following:

(1) Section 35.936-2 (Grantee procurement systems; State or local law);

(2) Section 35.936-7 (Small and minority business);

(3) Section 35.936-13 (Specifications);

(4) Section 35.936-15 (Limitations on subagreement award);

(5) Section 35.936-17 (Fraud and other unlawful or corrupt practices);

(6) Section 35.938-5(d) (Negotiation of contract amendments); and

(7) Applicable subagreement clauses (see Appendix C-2, clauses 8, 10, 14, 15, 16; note clause 11).

(c) The award of subcontracts under construction contracts not described above in paragraph (b) of this section and the procurement and negotiation procedures of prime contractors on contracts not meeting that description must comply with paragraphs (b)(1) through (b)(4) of this section as well as the principles of § 35.938-5.

§ 35.939 Protests.

(a) **General.** A protest based upon an alleged violation of the procurement requirements of §§ 35.936 through 35.938-9 of this subpart may be filed against a grantee's procurement action by a party with an adversely affected direct financial interest. Any such protest must be received by the grantee within the time period in paragraph (b)(1) of this section. The grantee is responsible for resolution of the pro-

test before the taking of the protested action, in accordance with paragraph (d) of this section, except as otherwise provided by paragraph (j) or (k) or § 35.938-4(h)(5). The Regional Administrator will review grantee protest determinations in accordance with paragraph (e) of this section, if a timely request for such review is filed under paragraph (b)(2) of this section. In the case of protests which he determines are untimely, frivolous, or without merit, the Regional Administrator may take such actions as are described in paragraphs (f)(7), (i)(2), and (k) of this section.

(b) **Time limitations.** (1) A protest under paragraph (d) of this section should be made as early as possible during the procurement process (for example, immediately after issuance of a solicitation for bids) to avoid disruption of or unnecessary delay to the procurement process. A protest authorized by paragraph (d) of this section must be received by the grantee within 1 week after the basis for the protest is known or should have been known, whichever is earlier (generally, for formally advertised procurement, after bid opening, within 1 week after the basis for the protest is, or should have been, known).

(i) However, in the case of an alleged violation of the specification requirements of § 35.936-13 (e.g., that a product fails to qualify as an "or equal") or other specification requirements of this subpart, a protest need not be filed prior to the opening of bids. But the grantee may resolve the issue before receipt of bids or proposals through a written or other formal determination, after notice and opportunity to comment is afforded to any party with a direct financial interest.

(ii) In addition, where an alleged violation of the specification requirements of § 35.936-13 or other requirements of this subpart first arises subsequent to the receipt of bids or proposals, the grantee must decide the protest if the protest was received by the grantee within 1 week of the time that the grantee's written or other formal notice is first received.

(2) A protest appeal authorized by paragraph (e) of this section must be received by the Regional Administra-

tor within 1 week after the complainant has received the grantee's determination.

(3) If a protest is mailed, the complaining party bears the risk of non-delivery within the required time period. It is suggested that all documents transmitted in accordance with this section be mailed by certified mail (return receipt requested) or otherwise delivered in a manner which will objectively establish the date of receipt. Initiation of protest actions under paragraphs (d) or (e) of this section may be made by brief telegraphic notice accompanied by prompt mailing or other delivery of a more detailed statement of the basis for the protest. Telephonic protests will not be considered.

(c) *Other initial requirements.* (1) The initial protest document must briefly state the basis for the protest, and should—

(i) Refer to the specific section(s) of this subpart which allegedly prohibit the procurement action;

(ii) Specifically request a determination pursuant to this section;

(iii) Identify the specific procurement document(s) or portion(s) of them in issue; and

(iv) Include the name, telephone number, and address of the person representing the protesting party.

(2) The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest which may be adversely affected by the determination of the protest (generally, all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied or sustained) and to the appropriate EPA Regional Administrator.

(d) *Grantee determination.* (1) The grantee is responsible for the initial resolution of protests based upon alleged violations of the procurement requirements of this subpart.

(2) When the grantee receives a timely written protest, he must defer the protested procurement action (see paragraph (h) of this section) and:

(i) Afford the complaining party and interested parties an opportunity to

present arguments in support of their views in writing or at a conference or other suitable meeting (such as a city council meeting).

(ii) Inform the complainant and other interested parties of the procedures which the grantee will observe for resolution of the protest;

(iii) Obtain an appropriate extension of the period for acceptance of the bid and bid bond(s) of each interested party, where applicable; failure to agree to a suitable extension of such bid and bid bond(s) by the party which initiated the protest shall be cause for summary dismissal of the protest by the grantee or the Regional Administrator; and

(iv) Promptly deliver (preferably by certified mail, return receipt requested, or by personal delivery) its written determination of the protest to the complaining party and to each other participating party.

(3) The grantee's determination must be accompanied by a legal opinion addressing issues arising under State, territorial, or local law (if any) and, where step 3 construction is involved, by an engineering report, if appropriate.

(4) The grantee should decide the protest as promptly as possible—generally within 3 weeks after receipt of a protest, unless extenuating circumstances require a longer period of time for proper resolution of the protest.

(e) *Regional Administrator review.*

(1) A party with a direct financial interest adversely affected by a grantee determination made under paragraph (d) with respect to a procurement requirement of this subpart may submit a written request to the Regional Administrator for his review of such determination. Any such request must be in writing, must adequately state the basis for the protest (including reference to the specific section(s) of this subpart alleged to prohibit the procurement action), and must be received by the Regional Administrator within 1 week after the complaining party has received the grantee's determination of the protest. A copy of the grantee's determination and other documentation in support of the request for review shall be transmitted with the request.

(2) The Regional Counsel or his delegate will afford both the grantee and the complaining party, as well as any other party with a financial interest which may be adversely affected by determination of the protest, an opportunity to present arguments in support of their views in writing or at a conference at a time and place convenient to the parties as determined by the Regional Counsel or his delegate, and he shall thereafter promptly submit in writing his report and recommendations (or recommended determination) concerning the protest to the Regional Administrator.

(3) Any such conference should be held within not more than 10 days after receipt of the request for review and the report should be transmitted to the Regional Administrator within 10 days after the date set for receipt of the participants' written materials or for the conference. The Regional Administrator should transmit his determination of the protest with an adequate explanation thereof to the grantee and simultaneously to each participating party within 1 week after receipt of the report and recommendations. His determination shall constitute final agency action, from which there shall be no further administrative appeal. The Regional Counsel may extend these time limitations, where appropriate.

(4) The Regional Administrator may review the record considered by the grantee, and any other documents or arguments presented by the parties, to determine whether the grantee has complied with this subpart and has a rational basis for its determination.

(5) If a determination is made by the Regional Administrator which is favorable to the complainant, the grantee's procurement action (for example, contract award) must be taken in accordance with such determination.

(f) *Procedures.* (1) Where resolution of an issue properly raised with respect to a procurement requirement of this subpart requires prior or collateral resolution of a legal issue arising under State or local law, and such law is not clearly established in published legal decisions of the State or other relevant jurisdiction, the grantee or

Regional Administrator may rely upon:

(i) An opinion of the grantee's legal counsel adequately addressing the issue (see § 35.936-2(b));

(ii) The established or consistent practice of the grantee, to the extent appropriate; or

(iii) The law of other States or local jurisdictions as established in published legal decisions; or

(iv) If none of the foregoing adequately resolve the issue, published decisions of the Comptroller General of the United States (U.S. General Accounting Office) or of the Federal courts addressing Federal requirements comparable to procurement requirements of this subpart.

(2) For the determination of Federal issues presented by the protest, the Regional Administrator may rely upon:

(i) Determinations of other protests decided under this section, unless such protests have been reversed; and

(ii) Decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this subpart.

(3) The Regional Counsel may establish additional procedural requirements or deadlines for the submission of materials by parties or for the accomplishment of other procedures. Where time limitations are established by this section or by the Regional Counsel, participants must seek to accomplish the required action as promptly as possible in the interest of expediting the procurement action.

(4) A party who submits a document subsequent to initiation of a protest proceeding under paragraph (d) or (e) of this section must simultaneously furnish each other party with a copy of such document.

(5) The procedures established by this section are not intended to preclude informal resolution or voluntary withdrawal of protests. A complainant may withdraw its appeal at any time, and the protest proceeding shall thereupon be terminated.

(6) The Regional Administrator may utilize appropriate provisions of this section in the discharge of his respon-

sibility to review grantee procurement under 40 CFR 35.935-2.

(7) A protest may be dismissed for failure to comply with procedural requirements of this section.

(g) *Burden of proof.* (1) In proceedings under paragraphs (d) and (e) of this section, if the grantee proposes to award a formally advertised, competitively bid, fixed price contract to a party who has submitted the apparent lowest price, the party initiating the protest will bear the burden of proof in the protest proceedings.

(2) In the proceedings under paragraph (e) of this section—

(i) If the grantee proposes to award a formally advertised, competitively bid, fixed-price contract to a bidder other than the bidder which submitted the apparent lowest price, the grantee will bear the burden of proving that its determination concerning responsiveness is in accordance with this subchapter; and

(ii) If the basis for the grantee's determination is a finding of nonresponsibility, the grantee must establish and substantiate the basis for its determination and must adequately establish that such determination has been made in good faith.

(h) *Deferral of procurement action.* Upon receipt of a protest under paragraph (d) of this section, the grantee must defer the protested procurement action (for example, defer the issuance of solicitations, contract award, or issuance of notice to proceed under a contract) until 10 days after delivery of its determination to the participating parties. (The grantee may receive or open bids at its own risk, if it considers this to be in its best interest; and see § 35.938-4(h)(5).) Where the Regional Administrator has received a written protest under paragraph (e) of this section, he must notify the grantee promptly to defer its protested procurement action until notified of the formal or informal resolution of the protest.

(i) *Enforcement.* (1) Noncompliance with the procurement provisions of this subchapter by the grantee shall be cause for enforcement action in accordance with one or more of the provisions of § 35.965 of this subpart.

(2) If the Regional Administrator determines that a protest prosecuted pursuant to this section is frivolous, he may determine the party which prosecuted such protest to be nonresponsible and ineligible for future contract award (see also paragraph (k) of this section).

(j) *Limitation.* A protest may not be filed under this section with respect to the following:

(1) Issues not arising under the procurement provisions of this subchapter; or

(2) Issues relating to the selection of a consulting engineer, provided that a protest may be filed only with respect to the mandatory procedural requirements of §§ 35.937 through 35.937-8;

(3) Issues primarily determined by State or local law or ordinances and as to which the Regional Administrator, upon review, determines that there is no contravening Federal requirement and that the grantee's action has a rational basis (see paragraph (e)(4) of this section).

(4) Provisions of Federal regulations applicable to direct Federal contracts, unless such provisions are explicitly referred to or incorporated in this subpart;

(5) Basic project design determinations (for example, the selection of incineration versus other methods of disposal of sludge);

(6) Award of subcontracts or issuance of purchase orders under a formally advertised, competitively bid, lump-sum construction contract. However, protest may be made with respect to alleged violation of the following:

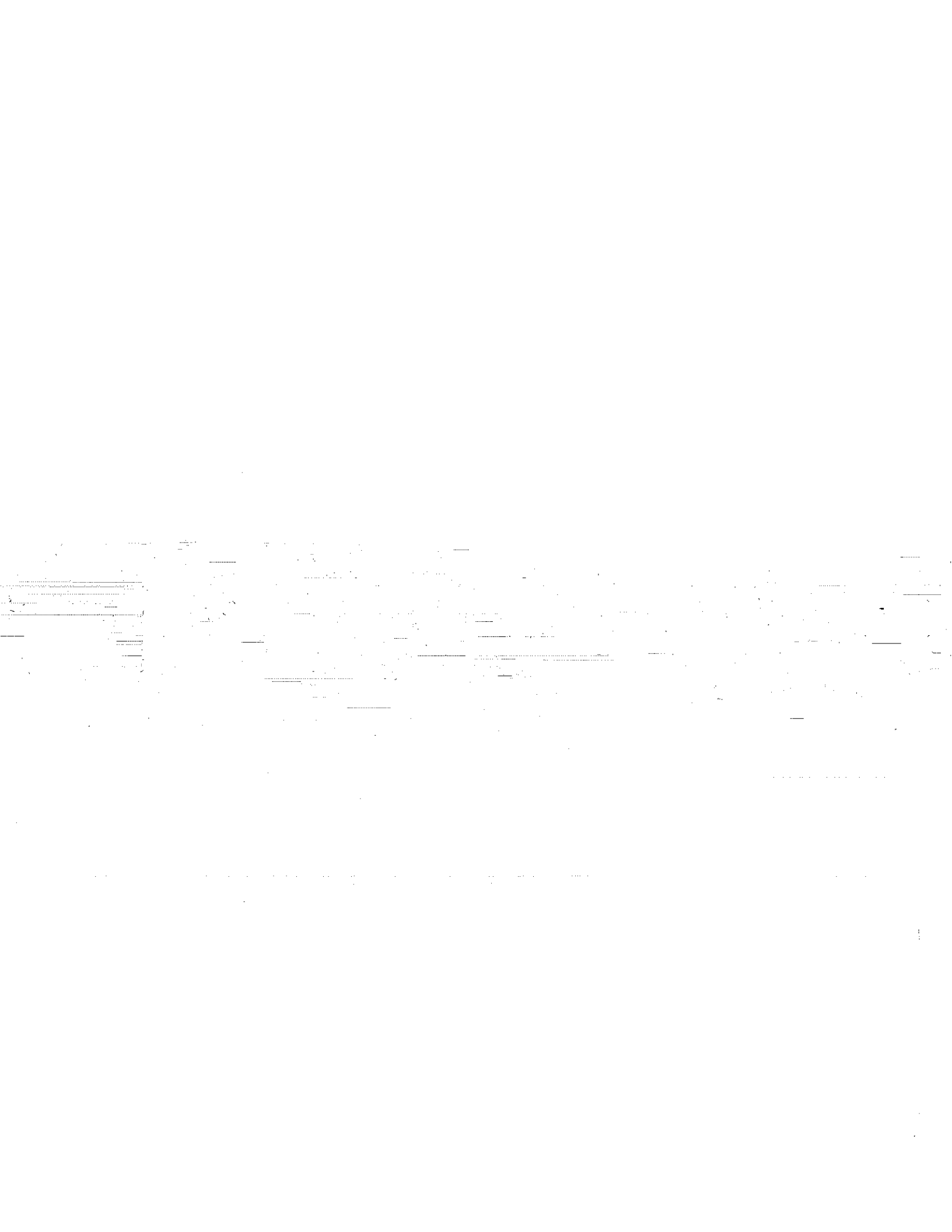
(i) Specification requirements of § 35.938-13; or

(ii) Provisions of this subpart applicable to the procurement procedures, negotiation or award of subcontracts or issuance of purchase orders under §§ 35.937-12 (subcontracts under subagreements for architectural or engineering services) or § 35.938-9 (subcontracts under construction contracts).

(k) *Summary disposition.* The Regional Administrator may summarily dismiss a protest, without proceedings under paragraphs (d) or (e) of this section, if he determines that the protest is untimely, frivolous or without

merit—for example, that the protested action of the grantee primarily involves issues of State or local law. Any such determination shall refer briefly to the facts substantiating the basis for the determination.

(l) *Index.* The EPA General Counsel will publish periodically as a notice document in the *FEDERAL REGISTER* an index of Regional Administrator protest determinations. (See, e.g., 43 FR 29085, July 5, 1978.)



SBE/MBE/WBE PLAN STATEMENT

40 CFR 33.005

§ 33.005. Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Part 30 and Part 35.

(b) As used in this part, the following words and terms mean:

Architectural or engineering (A/E) services. Consultation, investigations; reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Construction. Erection, building, alteration, remodeling, improvement, or extension of buildings, structures or other property. Construction also includes remedial actions in response to a release, or a threat of a release, of a hazardous substance into the environment as determined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contractor. Any party to whom a recipient awards a subagreement.

Cost analysis. The review and evaluation of each element of subagreement cost to determine reasonableness, allocability and allowability.

Intergovernmental Agreement. Any written agreement between units of government under which one public agency performs duties for or in concert with another public agency using EPA assistance. This includes substate and interagency agreements.

Minority business enterprise. A minority business enterprise is a business which is: (1) Certified as socially and economically disadvantaged by the Small Business Administration, (2) certified as a minority business enterprise by a State or Federal agency, or (3) an independent business concern which is at least 51 percent owned and controlled by minority group

member(s). A minority group member is an individual who is a citizen of the United States and one of the following:

- (i) Black American;
- (ii) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);
- (iii) Native American (American Indian, Eskimo, Aleut, native Hawaiian), or
- (iv) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).

Price analysis. The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed subagreement price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

Profit. The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on applicable Federal cost principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

Services. A contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents, (e.g., reports, design drawing, specifications). This term does not include employment agreements or collective bargaining agreements.

Small business. A business as defined in Section 3 of the Small Business Act, as amended (15 U.S.C. 632).

Subagreement. A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

Supplies. All property, including equipment, materials, printing, insur-

ances, and leases of real property, but excluding land or a permanent interest in land.

Women's business enterprise. A women's business enterprise is a business which is certified as such by a State or Federal agency, or which meets the following definition: A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws. For example, an otherwise qualified WBE which is 51 percent owned by a married woman in a community property state will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business.

MINORITY AND WOMEN'S BUSINESS PARTICIPATION POLICY

I. Minority and Women's Business Policy

- a. It is the policy of OWNER (Village of Grover Hill, Ohio) that Minority and Women's Business shall have the maximum feasible opportunity to participate in the performance of contracts performed under Federal grant-in-aid programs in accordance with the provisions of 40 CFR 31.36.e.
- b. All bidders under a prime contract with OWNER must comply with the MBE/WBE policy.
- c. The MBE/WBE participation goals for the contracts covered by these specifications, expressed as a percent of the total dollar amount of the contract are as follows:
 1. Minority Businesses - 10%
 2. Women's Businesses - 2%

II. DEFINITIONS

A. Minority Business Enterprise

The term "Minority Business Enterprise" means a business, at least 51 percent of which is owned and controlled by minority group members. The minority ownership must exercise actual day-to-day management.

The minority is a member of one or more of the following groups: Black American, Hispanic Americans, Asian Americans, American Indians, American Eskimos and American Aleuts.

B. Women's Business Enterprise

The term "women-owned business," and its variations, means a business which is at least 51 percent owned by a woman or women who also control and operate it.

1. Ownership. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws.
2. Control and operation. "Control" means exercising the power to make policy decisions, and "operate" means being actively involved in day-to-day management.

3. These are some of the factors to be considered in determining whether the requisite ownership and control exist:
 - a. The percentage of stock owned in a corporation or the proportion of capital invested in a partnership.
 - b. Whether ownership is meaningful (e.g., whether the woman's ownership interest is such that the woman owner can sell the business or liquidate at will, or whether the woman owner's interest is subject to a controlling lien on her interest).
 - c. The provisions for sharing income and losses.
 - d. Whether there is evidence that the woman owner participates significantly in business policy development and decisions of importance to the business (e.g., whether there are procedures requiring her "sign-off" on significant actions; or whether there is evidence of substantial change in actions in response to her comments).
 - e. Whether corporate history indicates that the business is, in fact, woman controlled.

III. Evaluation of Goal Achievement and/or Positive Efforts

- A. As a prerequisite to demonstrate, Minority and Women's Business Compliance and goal achievement, all bidders must provide the following data with its bid:
 1. Identification of a specific individual who should be contacted on all Minority and Women's Business matters.
 2. Proposed percentage of Minority and Women's Business participation vs. the OWNER's stated goal.
 3. For proposals less than the OWNER's stated goal, a narrative documentation of the positive efforts taken to encourage the utilization of Minority and Women's Businesses and the reason for the inability to achieve the stated goal.

NOTE: MWBE Data Sheet 1 must be used for this purpose. Data Sheet I is to be filled out by all bidders and submitted with the bid. Failure to supply this information will cause rejection of the bid as non-responsive.

- B. Within fifteen (15) days of the date on which the owner notifies a bidder that its bid is the apparent low responsive bid, the bidder shall provide such additional information, if any changes are necessary since the original submittal, to complete its documentation to meet the following:

1. For bidders committed to achieving the goal.

- a. Total dollar amount of Minority and Women's Business participation.
- b. List of Minority and Women's Business subcontractors planned for utilization.
- c. Type of work and dollar amount relating to each subcontractor.

NOTE: Use Data Sheet II to provide this information.
Data Sheet II is to be used by all bidders committed to achieving the goal.

2. For bidders not committed to achieving the goal

- a. Provide name, address, phone number, contact person, amount and type of work to be done by subcontractors.
- b. Efforts to extend opportunities to Minorities and Women's Businesses such as advertisements in trade newsletters, newspapers or minority-owned media no less than fifteen (15) days before responses are due for specific subcontracts.
- c. Written notification to minority contact associations, if available in the area, including the local MBDO office no less than fifteen (15) days before responses are due.
- d. Efforts made to segment the work to be subcontracted in order to provide opportunities for Minorities and Women's Businesses.
- e. Copies of solicitation letters sent to Minority and Women's Businesses describing segments of the work to be performed and requesting quotes or proposals from them. In general, solicitation letters should be postmarked no later than fifteen (15) days before the Minority and Women's Business responses are due.

NOTE: Use Data Sheet III to provide this information.
Data Sheet III is to be used by all bidders not committed to achieving the goal.

IV. Sanctions

- A. The OWNER may reject one or all bids for non-compliance with its policy.
- B. The OWNER will invoke sanctions as it deems appropriate for non-compliance with its policy.
- C. The OWNER reserves the right to waive minor deficiencies in all bids taken.

PROTESTS

All protests shall be submitted to the OWNER for resolution. After a determination by the OWNER, the bidders have the right to appeal the decision according to the applicable provisions of 40 CFR Part 31.36.b.(11).

MINORITY AND WOMEN'S BUSINESS PARTICIPATION POLICY

WMBE DATA SHEET 1

1. Name, Address and telephone Number of person to contact on all MBE, WBE matters

Name _____

Address _____

Telephone Number _____

2. Proposed percentage of Minority and Women's Business participation vs. OWNER's goal.

_____	VS	_____
MBE Participation		OWNER's Goal

_____	VS	_____
WBE Participation		OWNER's Goal

3. For proposals less than the OWNER's stated goal, use the space below to provide narrative documentation of the positive efforts taken to encourage the utilization of MBE and WBE, and the reason for the inability to achieve the goal.

MINORITY AND WOMEN'S BUSINESS PARTICIPATION POLICY

MBE DATA SHEET II

1. Total dollar amount of MBE participation _____
2. % of MBE Participation _____
3. Total dollar amount of WBE participation _____
4. % of WBE participation _____
5. List name, address, phone number, contact person, type of subcontract (contruction, supplies, labor, etc.), dollar amount of subcontract for all MBE/WBE subcontracts

MBE

Name: _____
Address: _____
Phone: _____
Contact Person: _____
Type of contract or work to be done: _____
Amount: _____

WBE

Name: _____
Address: _____
Phone: _____
Contact Person: _____
Type of contract or work to be done: _____
Amount: _____

(Furnish data for additional subcontractors on plain bond paper.)

MINORITY AND WOMEN'S BUSINESS PARTICIPATION POLICY

MBE DATA SHEET III

1. Information concerning the subcontractor(s) who will be used

Name: _____
Address: _____
Phone: _____
Contact Person: _____
Amount of subcontract quotation: _____
Segment of work to be subcontracted: _____

Information to be submitted by the bidder concerning good faith efforts taken.

2. Announcement: List each publication in which an announcement or notification was placed and attach a copy of each announcement from each publication.

Name of publication:

Address

Dates of announcement:

Specific subcontract
announced:

3. Contractor Associations: List all Minority and Women's Business contractor associations, construction supply associations, or general business associations notified attach a copy of each notification letter.

Name, address and phone number of Association:

4. Minority and Women's Business: List each Minority and Women's Business construction firm or supplier to which a letter of solicitation was sent or with whom negotiations were held.

Company name and phone number:

Area of Minority and Women's Business expertise:

Date of any follow-up call and person spoken to:

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

REQUEST FOR DETERMINATION
AND RESPONSE TO REQUEST

(Davis Bacon Act as Amended
and Related Statutes)

FOR DEPARTMENT
OF LABOR USE

Response To Request

a. ☐ Use area determination
issued for this area

b. ☒ The attached decision
noted below is applicable
to this project

Decision Number

89-04-0001

Date of Decision

2-16-89

Expires

8-14-89

Supersedes Decision Number

Approved

Allen Mroz
Director
Division of Wage
Determinations

Requesting Officer (typed name and signature)

Jack P. Hoogeveen

Department, Agency, or Bureau

Ohio EPA

Phone Number

614/644-2841

Date of Request

12-21-88

Est. Advertising Date

1-15-89

Est. Bid Opening Date

2-15-89

Prior Decision
Number (if any)

—

Est. \$ Value of Contract

☐ Under 1/2 Mil. ☒ 1 to 5 Mil.

☐ 1/2 to 1 Mil. ☐ Over 5 Mil.

Type of Work

☒ Bldg. ☐ Highway

☐ Resid. ☐ Heavy

Location of Project (city or other description)

Shower Hill

County

Paulding

State

Ohio

Address to which wage determination should be mailed. Must be
complete and include ZIP Code. (Print or type)

Mr. Jack P. Hoogeveen
Grants Program, DWPC
Ohio Environmental Protection Agency
P.O. Box 1049-0149
Columbus, Ohio 43266-0149

Wage Survey by Agency Attached

☐ YES ☒ NO

Wage Survey by Agency in Progress

☐ YES ☒ NO

Description of Work (Be specific) (Print or type)

New construction - Waste Water Treatment
Plant Improvements

CHECK OR LIST CRAFTS NEEDED
(Attach continuation sheet if needed)

— Asbestos workers
— Boilermakers
☒ Bricklayers
☒ Carpenters
☒ Cement masons
☒ Electricians
☒ Glaziers
— Ironworkers
☒ Laborers, (specify classes)
☒ Air tool operator
☒ Mason tenders
☒ Mortar Mixers
☒ Pipe Layers (concrete 7 cl.)
☒ Plasterers Tenders
— Lathers
— Marble & tile setters, terrazzo
workers
☒ Painters
— Piledrivers
☒ Plasterers
☒ Plumbers
☒ Roofers
☒ Sheet metal workers
☒ Soft floor layers
— Steamfitters
— Welders--rate for craft
☒ Truck drivers
☒ Power equipment operators,
(specify types)
☒ Bulldozers
☒ Cranes, Derricks
☒ Finishing Machines
☒ Graders
Other crafts

89-0H-0001

DARKE, MERCER, PAULDING, PUTNAM, & VAN WERT COUNTIES, OHIO
COMMERCIAL BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:					
Darke County	\$18.12	\$3.56	IRONWORKERS, Structural		
Mercer County	18.20	3.32	& Ornamental:		
Putnam County	19.60	3.11	Within 25 mi. radius of		
BRICKLAYERS:			L.U. #290	\$17.41	\$4.37
Darke County	15.85	3.91	Outside 25 mi. radius		
CARPENTERS:			of L.U. #290	17.56	4.37
Darke County	16.85	3.90	LABORERS:		
Remaining Counties	12.81	2.34	Common:		
CEMENT MASONS:			Darke County	13.10	3.00
Darke County	16.48	2.90	Remaining Counties	9.86	1.99
ELECTRICIANS:			PAINTERS, Brush:		
Darke County	18.25	3.5%+	Darke County	13.33	
		2.63	PLASTERERS:		
Mercer & Van Wert Cos.	17.35	3%+a+	Darke County	17.95	1.90
		2.77	ROOFERS:		
Putnam County	20.01	2.00	Darke County	15.75	2.25+b
GLAZIERS:			SHEET METAL WORKERS:		
Darke County	13.26	1.21	Darke County	16.17	3.93+ c
FOOTNOTES:					
a. 1 Paid Holiday:					
Labor Day					
b. .625% of total wage					
package					
c. 3% of gross earnings					
to SASMI					

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 (29 CFR, 5.5 (a) (1) (ii)).

DWPC-Grants Program

FEB 28 1989

CERTIFIED

WS-2



GENERAL WAGE DECISION NO. OH89-2

Supersedes General Wage Decision No. OH88-2

State: OHIO

County(ies): Statewide

Construction
Type: Heavy & Highway

Construction
Description: Heavy and Highway Construction Projects

Modification Record:		
No.	Publication Date	Page No.(s)



OH89-2

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS & STONEMASONS:		
Area 1	17.14	2.75
Area 2	16.70	2.75
Area 3	17.49	3.84
Area 4:		
Bricklayers	19.87	3.00
Sewer Bricklayers	20.12	3.00
Area 5	16.48	2.55
Area 6	16.02	2.72+ 8%
Area 7	16.345	3.58
Area 8	17.19	3.67
Area 9	16.39	4.36
Area 10	16.39	4.36
Area 11	17.40	3.96
Area 12	16.50	2.80
Area 13	15.50	3.65
Area 14	20.62	4.69
Area 15	15.67	3.56
Area 16	16.65	3.10
Area 17	16.73	4.26
Area 18	16.93	4.58
Area 19	17.96	2.25
Area 20	18.50	3.78
Area 21	17.70	2.70
Area 22	21.44	3.85
Area 23	15.67	3.56
Area 24	16.74	3.34
Area 25	15.75	2.85
Area 26	16.81	.55
Area 27	18.87	1.81+ a
Area 28	18.62	5.05
Area 29	17.50	2.85
Area 30	17.31	4.05
CARPENTERS & PILEDRIVERMEN:		
Area 1:		
Carpenters	16.37	3.36
Piledrivermen	16.66	3.36
Area 2:		
Carpenters	16.40	3.85
Piledrivermen	17.08	3.85
Area 3:		
Carpenters	17.69	3.61
Piledrivermen	19.00	6.11
Area 4:		
Carpenters	19.90	5.21
Piledrivermen	19.00	6.11
Area 5:		
Carpenters	15.76	3.78+ 3%
Piledrivermen	16.58	3.78+ 3%
Area 6	17.60	3.125
Area 7:		
Carpenters	17.68	3.37
Piledrivermen	17.66	3.37
Area 8:		



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Carpenters	15.76	3.78+ 3%
Piledrivermen	16.30	30%
Area 9	16.85	3.90
Area 10:		
Carpenters	16.90	3.73
Piledrivermen	19.41	3.98
Area 11:		
Carpenters	17.69	3.61
Piledrivermen	19.41	3.98
Area 12:		
Carpenters	20.16	3.73
Piledrivermen	19.41	3.98
Area 13:		
Carpenters:		
General contract bid value of		
- \$250,000.00 or less	15.55	3.82
All other work	17.28	3.82
Piledrivermen	18.31	3.82
Area 14:		
Carpenters	19.42	3.77
Piledrivermen	19.00	6.11
Area 15:		
Carpenters	16.90	3.73
Piledrivermen	19.41	3.98
Area 16:		
Carpenters	20.16	3.73
Piledrivermen	19.41	3.98
CEMENT MASONS:		
Area 1	17.23	3.22
Area 2	17.36	2.62
Area 3	15.91	3.22
ELECTRICIANS:		
Area 1	18.33	3.08+ 3%
Area 2	17.60	3.77+ 3%+ b
Area 3	18.14	2.91+ 3.2%
Area 4	18.30	3.80+ 3.5%
Area 5	19.36	1.91+ 9.7%
Area 6:		
Electricians	16.28	6.26+ 3%
Cable Splicers	16.53	6.26+ 3%
Area 7:		
Electricians	15.18	4.54+ 3%
Cable Splicers	15.43	4.54+ 3%
Area 8	17.85	3.30+ 3.50%
Area 9:		
Electricians	18.50	3.25+ 3.5%
Cable Splicers	19.00	3.25+ 3.5%
Area 10	19.00	46%+ c
Area 11	17.58	5.26+ 10.8%
Area 12	14.73	2.89+ 3%
Area 13	18.26	3.67+ 3.5%
Area 14:		
Electricians	18.00	45%+ c
Cable Splicers	18.50	45%+ c
Area 15	17.24	1.55+ 24.5%
Area 16	16.80	2.75+ 3%
Area 17	21.77	3.13+ 3%



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Area 18:			
Electricians	20.00	4.34+	3.5%
Cable Splicers	20.00	4.34+	3.5%
Area 19:			
Electricians	18.00	3.98+	3%
Cable Splicers	18.60	3.98+	3%
Area 20:	18.25	2.50+	3.1%
Area 21:			
Electricians	17.75	3.21+	3%
Cable Splicers	19.08	3.21+	3%
Area 22:			
Electricians	17.32	3.26+	3%
Cable Splicers	18.19	3.26+	3%
Area 23:			
Electricians	18.93	3.75+	3.3%
Cable Splicers	19.18	3.75+	3.3%
Area 24:	19.20	3.50+	3.2%
Area 25:			
Electricians	19.66	3.00+	3.2%
Cable Splicers	21.04	3.00+	3.2%
IRONWORKERS:			
Area 1:			
Up to 10 miles from Union Hall in Ashland, Kentucky	17.33	4.26	
10 to 50 miles from Union Hall in Ashland, Kentucky	17.66	4.26	
50 miles & over from Union Hall in Ashland, Kentucky	19.62	4.26	
Area 2:			
Reinforcing	17.48	4.52	
Ornamental; Structural	16.78	4.58	
Fence Erectors	15.10	4.58	
Area 3:			
Within 25 miles radius of L. U. Office #290	17.41	4.62	
Outside 25 miles radius of L. U. Office #290	17.56	4.62	
Area 4:	13.35	6.76	
Area 5:			
Fence Erectors	12.00	5.00	
All Other Work	15.73	6.75	
Area 6:			
Ornamental; Reinforcing; Structural Sheeter	17.30	4.14	
Area 7:	19.05	4.14	
Area 8:	20.12	5.17	
Ornamental; Reinforcing; Structural Sheeter; Layout Man	16.96	6.36	
Area 9:	17.96	6.36	
Area 10:	17.93	4.57	
Area 11:	15.76+8%	6.45	
Area 12:	16.65	6.18	
PAINTERS:	20.63	4.09	
Area 1:			
Brush; Roller	15.65	2.54	
Power Tools under 40'; Sandblasting; Spray; & Steamcleaning	16.15	2.54	



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Bridges; Skeletal Structures over 40'; Stacks; & Storage Tanks	16.25	2.54
Area 2:		
Brush; Roller	15.65	2.13
Pressure Cleaning; Sandblasting; Spray	16.15	2.13
Bridges; Guard Rails; & Open Struc- tural Steel	16.25	2.13
Area 3:		
Brush	14.45	.95
Structural Steel	14.95	.95
Spray	15.20	.95
Area 4:		
Brush	19.81	3.92
Bridge & Open Steel; Closed Steel over 55' and Tanks	20.51	3.92
Closed Steel Below 55'; Spray; Sandblasting and Buffing	20.21	3.92
Area 5:		
Brush; Roller	17.10	
Bridges; Sandblasting; Hopper Tender; & Spray	17.75	
Area 6	15.50	1.75
Area 7:		
Brush	18.10	1.10
Spray	18.60	1.10
Sandblast, Waterblast and Hopper Tender	18.85	1.10
Bridges when highest point of clear- ance is 60 feet or more:		
Brush; Spray	19.10	1.10
Sandblast; Waterblast and Hopper Tender	19.85	1.10
Area 8:		
Brush; Roller	14.98	1.20+ d
Bridges (when highest point of clearance is 40' or over)	15.48	1.20+ d
Sandblasting; Spray	15.98	1.20+ d
Area 9:		
Brush; Roller	15.80	3.59
Spray; Tanks	16.33	3.59
Bridges; Poles; Pressure Blasting; Towers; Structural Steel; Stacks; Sandblasting; & Metalizing	16.51	3.59
Area 10:		
Brush	14.75	1.00
Spray	15.45	1.00
Area 11:		
Brush; Roller	17.62	1.00
Structural Steel	18.02	1.00
Sandblast; Spray	18.12	1.00
Area 12:		
Brush; Roller; Tanks; Bridges; Hydro Jet Cleaning; & Steamcleaning	16.49	3.66
Pot Tender; Sandblasting; & Spray	17.19	3.66
TV, Radio, & Electrical Towers; Smoke Stacks	17.37	3.66



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Epoxy-Mastic (Brush or Roller)	17.39	3.66
Epoxy-Mastic (Spray)	17.69	3.66
Area 13:		
Brush; Roller	16.39	2.87
Structural Steel	16.69	2.87
Spray	16.89	2.87
Sandblasting; Steam Cleaning	17.09	2.87
Area 14:		
Brush; Roller	15.10	2.25+ e
Structural Steel	15.55	2.25+ e
Sandblasting; Spray	15.60	2.25+ e
Area 15:		
Brush	15.15	3.62
Spray	15.70	3.62
Bridge Railings	15.40	3.62
Bridges	16.45	3.62
Area 16:		
Brush; Roller	14.70	1.06+ f
Sandblasting; Spray; & Waterblasting	15.70	1.06+ f
Bridges over 40'; Stacks; Tanks; & Towers	15.70	1.06+ f
Area 17:		
Brush	13.86	
Steel	14.45	
Spray	15.36	
Sandblasting	15.36	
Bridges	16.32	
Area 18:		
Brush; Roller	17.97	4.30
Structural Steel	18.72	4.30
Spray	18.82	4.30
Bridges; Sandblasting	18.97	4.30
Area 19:		
Bridges; Structural Steel; Guard Rails	15.24	1.95
Spray	15.13	1.95
PIPEFITTERS; PLUMBERS; & STEAMFITTERS:		
Area 1:		
Within 10 mile radius of Portsmouth	17.87	4.02
Over 10 & within 20 mile radius of Portsmouth	18.12	4.02
Over 20 & within 35 mile radius of Portsmouth	18.22	4.02
Over 35 mile radius of Portsmouth	18.47	4.02
Area 2	19.15	3.15
Area 3	19.53	3.67
Area 4:		
Plumbers	20.73	4.00
Pipefitters; and Steamfitters	20.25	5.30
Area 5	16.63	4.41
Area 6:		
Plumbers; Gas Fitters	17.20	4.49
Pipefitters; and Steamfitters	18.04	5.06
Area 7	18.80	3.80
Area 8	17.60	4.52
Area 9	18.82	2.33
Area 10	18.14	3.29



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Area 11	18.56	3.93
Area 12	16.43	5.94
Area 13	18.50	7.92
Area 14	20.00	5.70
Area 15	20.00	3.86
Area 16	19.65	4.15
Area 17	18.75	1.98
Area 18	17.23	5.56
LABORERS:		
Excluding Railroad Maintenance, Renovation and Repair:		
Group 1:		
Zone 1	16.28	3.00
Zone 2	15.05	3.00
Zone 3	14.62	3.00
Group 2:		
Zone 1	16.405	3.00
Zone 2	15.175	3.00
Zone 3	14.745	3.00
Group 3:		
Zone 1	16.48	3.00
Zone 2	15.25	3.00
Zone 3	14.82	3.00
Group 4:		
Zone 1	16.63	3.00
Zone 2	15.40	3.00
Zone 3	14.97	3.00
Group 5:		
Zone 1	16.93	3.00
Zone 2	15.70	3.00
Zone 3	15.27	3.00
Railroad Maintenance, Renovation and Repair:		
Cuyahoga, Geauga, Lake, Lorain, Lucas, Portage, & Summit Cos.	8.75	2.70
Remaining Counties	8.25	2.70
POWER EQUIPMENT OPERATORS:		
Zone 1: Columbiana, Mahoning & Trumbull Counties:		
Class 1	16.84	5.53
Class 2	16.00	5.53
Class 3	15.18	5.53
Class 4	14.68	5.53
Class 5	14.58	5.53
Class 6	17.11	5.53
Zone 2: Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, Medina, Portage & Summit Cos.:		
Master Mechanic	18.78	4.45
Class A	18.53	4.45
Class B	18.43	4.45
Class C	17.39	4.45
Class D	16.92	4.45
Class E	13.23	4.45
Zone 3: Remainder Of Counties:		
Master Mechanic	18.04	4.45
Class A	17.79	4.45

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Class B	17.67	4.45	
Class C	16.63	4.45	
Class D	16.20	4.45	
Class E	12.34	4.45	
TRUCK DRIVERS:			
Zone 1: Cuyahoga, Geauga, & Lake Counties:			
Class 1	15.75	g	
Class 2	15.90	g	
Class 3	16.25	g	
Zone 2: Remainder of State:			
Class 1	14.14	2.17+	h
Class 2	14.19	2.17+	h
Class 3	14.24	2.17+	h
Class 4	14.34	2.17+	h
Class 5	14.44	2.17+	h
Class 6	14.61	2.17+	h
LINE CONSTRUCTION:			
Area 1:			
Cable Splicers; Linemen Welders	20.31	2.35+	3.5%
Linemen	18.46	2.35+	3.5%
Operators: All Mechanized Equipment	14.77	2.35+	3.5%
Groundmen	12.00	2.35+	3.5%
Area 2:			
Linemen	18.97	1.50+	8.5%+1
Equipment Operators	17.07	1.50+	8.5%+1
Groundmen Truck Drivers	12.42	1.50+	8.5%+1
Area 3:			
Equipment Operators; Linemen	18.14	2.91+	3.2%
Line Truck Driver	10.88	2.91+	3.2%
Groundmen	11.79	2.91+	3.2%
Area 4:			
Cable Splicers Equipment Operators; Line Truck Drivers; & Linemen	18.93	3.80+	3.5%
Groundmen	15.65	3.80+	3.5%
Area 5:			
Cable Splicers; & Linemen	19.75	1.00+	10.5%
Pole Digging Equipment	17.78	1.00+	10.5%
Groundmen	15.80	1.00+	10.5%
Area 6:			
Equipment Operators; Linemen & Technicians	15.43	4.25+	3.5%
Cable Splicers & Welders	15.68	4.25+	3.5%
Groundmen	12.42	4.25+	3.5%
Area 7:			
Linemen; Mechanized Equipment Operators	17.60	3.30+	3.50%
Groundmen	13.20	3.30+	3.50%
Area 8:			
Linemen	18.50	3.25+	3.5%
Cable Splicers	19.00	3.25+	3.5%
Groundmen	12.95	3.25+	3.5%
Area 9:			
Cable Splicers	16.47	5.26+	10.8%
Linemen	17.58	5.26+	10.8%
Line Equipment Operators	15.32	5.26+	10.8%
Groundmen; Truck Drivers	11.72	5.26+	10.8%



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Area 10:			
Linemen; Line Equipment Operators;			
Truck Drivers.	19.00	45.5%+	c
Groundmen	11.40	45.5%+	c
Area 11:			
Cable Splicers; Equipment Operators;			
Linemen	22.28	1.00+	3.5%
Groundmen; Truck Drivers (Winch)	14.48	1.00+	3.5%
Area 12:			
Linemen; Cable Splicer; Operators:			
Hole Digging Equipment, Cranes, Hy-			
draulic Lift or Bucket	18.25	2.89+	3.5%
Operators: Line Truck with Winch or			
Pole & Steel Handling	13.69	2.89+	3.5%
Operators: Non-Specialized Trucks &			
Miscellaneous Equipment; Groundmen-			
Truck Drivers	10.95	2.89+	3.5%
Area 13:			
Linemen; Line Equipment Operators, &			
Truck Drivers	18.00	44.5%+	c
Groundmen	10.80	44.5%+	c
Area 14:			
Linemen; Cable Splicers; Equipment			
Operators	19.47	2.50+	3.5%
Groundmen	10.81	2.50+	3.5%
Area 15:			
Linemen	20.56	1.25+	10.5%+ j
Technicians	19.94	1.25+	10.5%+ j
Cable Splicers	23.64	1.25+	10.5%+ j
Operators, Class 1	16.45	1.25+	10.5%+ j
Operators, Class 2	14.39	1.25+	10.5%+ j
Groundmen	12.29	1.25+	10.5%+ j
Area 16:			
Linemen; Cable Splicers	16.83	1.00+	3.5%
Operators	14.67	1.00+	3.5%
Area 17:			
Cable Splicers; Equipment Operators &			
Linemen	18.25	2.50+	3.1%
Truck Drivers (Winch), Groundmen;			
Groundmen	11.86	2.50+	3.1%
Area 18:			
Cable Splicers; Linemen	16.75	2.20+	3.5%
Equipment Operators	14.52	2.20+	3.5%
Groundmen	10.39	2.20+	3.5%
Area 19:			
Cable Splicers	19.08	3.15+	3.5%
Linemen; Equipment Operators	17.75	3.15+	3.5%
Truck Drivers	11.09	3.15+	3.5%
Groundmen	10.68	3.15+	3.5%
Area 20:			
Cable Splicers; Equipment Operators;			
Linemen	19.47	2.75+	3.5%
Groundmen	10.81	2.75+	3.5%
Area 21:			
Cable Splicers	19.18	3.75+	3%
Equipment Operators & Linemen	18.93	3.75+	3%
Truck Drivers (Winch), Groundmen;			



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Groundmen	12.30	3.75+ 3%
Area 22:		
Cable Splicers; Equipment Operators; & Linemen	19.20	3.50+ 3.5%
Truck Driver (Winch), Groundmen; Groundmen	12.48	3.50+ 3.5%
Area 23:		
Linemen	19.66	3.00+ 3.5%
Cable Splicers	21.04	3.00+ 3.5%
Equipment Operators	14.75	3.00+ 3.5%
Truck Drivers; Groundmen	9.83	3.00+ 3.5%
Area 24:		
Cable Splicers; Equipment Operators; & Linemen	17.24	.60+ 3.5%
Groundmen	10.25	.60+ 3.5%
Area 25:		
Cable Splicers, Equipment Operators, and Linemen	22.53	2.25 + 3.5%
Truck Drivers (Winch) Groundmen	14.64	2.25 + 3.5%
POWER EQUIPMENT OPERATORS:		
Statewide, Except Columbiana, Mahoning & Trumbull Counties:		
Well & Pump Work (Including Drilling & Repair of All Water Wells; Test Holes & Wells; & Installation & Repair of Deep Well Type & Shallow Well Pumps on Water Wells):		
Well Drill & Pump Installer	8.10	.61+ 1

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving
Day; and G-Christmas Day

FOOTNOTES:

- a. 2 Paid Holidays: C & D
- b. 1 Paid Holiday: D
- c. 1 1/2 Paid Holidays: The last scheduled workday prior to Christmas and 4 hours on Good Friday
- d. \$25.00 per year per employee
- e. \$50.00 per year per employee
- f. \$50.00 per year per employee
- g. \$96.00 per week per employee; 1 week's paid vacation for 1 year of service, 2 weeks' paid vacation for 5 years, 3 weeks' paid vacation for 10 years and 4 weeks' paid vacation for 17 years' service; 7 Paid Holidays: A through E, G and National Election Day
- h. \$33.00 per week per employee
- i. 1/2 Day Paid Holiday: The last 4 hrs. of the workday prior to Christmas or New Year's Day
- j. 6 Paid Holidays: A through E and G, providing the employee has been on the payroll prior to the holiday and has worked the



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scheduled workday preceding and the scheduled workday following such holiday (except excused absences)

- k. 9 Paid Holidays: A through G, Good Friday and Christmas Eve Day
- l. Employees who have been in continuous employment of the company for less than 1 year as of January 1 will receive pro-rated vacation based on 5/12 day per full month of employment, but not exceeding 5 days' vacation; 3rd continuous calendar year - 2 weeks' paid vacation; 11th continuous calendar year - 3 weeks' paid vacation

AREA DESCRIPTIONS

BRICKLAYERS and STONEMASONS:

- Area 1: Adams and Scioto Counties
- Area 2: Allen, Auglaize, Mercer and Van Wert Counties
- Area 3: Ashland, Crawford, Hardin, Holmes, Marion, Morrow, Richland, Wayne (except the Townships of Milton and Chippewa), and Wyandot (except the Townships of Crawford, Richland, Ridge and Tymochtee) Counties
- Area 4: Ashtabula County
- Area 5: Athens County
- Area 6: Belmont, Jefferson (Warren and Mt. Pleasant Twp. and the village of Dillonvale) and Monroe Counties
- Area 7: Brown, Butler, Clermont, Hamilton, Preble (Townships of Dixon, Gratis, Israel, Lanier, and Somers), and Warren Counties
- Area 8: Carroll, Columbiana (Townships of Butler, Hanover, Knox and West), Stark and Tuscarawas Counties
- Area 9: Champaign, Clark and Logan Counties
- Area 10: Clinton and Highland Counties
- Area 11: Columbiana County (Townships of Center, Elk Run, Fairfield, Middleton, Perry, Salem and Unity and the City of New Waterford), Mahoning County and Trumbull County (City of Youngstown)
- Area 12: Columbiana (Townships of Liverpool, Franklin, Madison, St. Clair, Washington, Wayne and Yellow Creek), and Jefferson (Townships of Brush, Creek and Saline) Counties
- Area 13: Coshocton, Fairfield, Guernsey, Hocking, Knox, Licking, Morgan, Muskingum, Noble, (Wayne, Beaver, Buffalo, and Seneca Twp.) and Perry Counties
- Area 14: Cuyahoga County and Medina County (except the Townships of Chatham, Wadsworth, Guilford, Westfield, Sharon, Lafayette, Harrisville, Homer, Litchfield and Spencer)
- Area 15: Darke, Miami, and Shelby Counties
- Area 16: Defiance, Fulton (except the Townships of Amboy, Fulton, and Swan Creek), Henry (except the Townships of Bartlow, Damascus, Liberty, Marion, Monroe, Richfield, Washington and that part of Harrison outside the City limits of Napoleon), Paulding, Putnam and Williams Counties
- Area 17: Delaware, Franklin, Madison, Pickaway and Union Counties
- Area 18: Erie, Hancock, Huron, Ottawa, Sandusky, Seneca, Wood (Perry and Bloom Townships), Wyandot (Tymochtee, Crawford, Ridge, and Richland Townships) Counties and the Islands of Lake Erie north of Sandusky
- Area 19: Fayette, Pike and Ross Counties



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- Area 20: Fulton (Remainder of County), Henry (Remainder of County), Lucas, and Wood (Remainder of County) Counties
- Area 21: Gallia and Meigs Counties
- Area 22: Geauga and Lake Counties
- Area 23: Greene, Montgomery, and Preble (Remainder of County) Counties
- Area 24: Harrison and Jefferson (Remainder of County) Counties
- Area 25: Jackson and Vinton Counties
- Area 26: Lawrence County
- Area 27: Lorain and Medina (Chatham, Harrisville, Homer, Litchfield, and Spencer Townships) Counties
- Area 28: Medina (Remainder of County), Portage, Summit and Wayne (Townships of Milton and Chippewa) Counties
- Area 29: Noble (Remainder of County) and Washington Counties
- Area 30: Trumbull County (except the City of Youngstown)

CARPENTERS and PILEDRIVERMEN:

- Area 1: Adams, Fayette, Gallia, Highland, Jackson, Lawrence, Meigs, Pike, Ross, and Scioto Counties
- Area 2: Allen, Athens, Auglaize, Champaign, Clark, Coshocton, Delaware, Fairfield, Franklin, Guernsey, Hardin, Hocking, Holmes, Knox, Licking, Logan, Madison, Marion, Mercer, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Putnam, Union, Van Wert, Vinton, Washington, and Wyandot Counties
- Area 3: Ashland, Crawford, Erie (East of B & O Railroad Tracks), Huron, Lorain, and Richland Counties
- Area 4: Ashtabula, Cuyahoga, Geauga and Lake Counties
- Area 5: Belmont, Harrison, and Monroe Counties
- Area 5: Brown, Butler, Clermont, Clinton, Hamilton, and Warren Counties
- Area 7: Carroll, Stark, Tuscarawas, and Wayne Counties
- Area 8: Columbiana and Jefferson Counties
- Area 9: Darke, Greene, Miami, Montgomery, Preble and Shelby Counties
- Area 10: Defiance, Hancock (Exclu. city of Fostoria), Henry, Paulding and Williams Counties
- Area 11: Erie (West of B & O Railroad Tracks), Ottawa, Sandusky and Seneca Counties and the City of Fostoria in Hancock and Wood Counties
- Area 12: Lucas, and Wood (N. of Roachton Road Extended, excluding the City of Fostoria), Counties
- Area 13: Mahoning and Trumbull Counties
- Area 14: Medina, Portage, and Summit Counties
- Area 15: Fulton County
- Area 16: Wood Co. (S. of Roachton Road Extended, excluding the City of Fostoria)

CEMENT MASONS:

- Area 1: Ashtabula, Cuyahoga, Fulton, Geauga, Hancock, Henry, Lake, Lucas, Putnam, and Wood Counties
- Area 2: Brown, Butler, Clermont, Columbiana, Defiance, Erie, Hamilton, Highland, Huron, Lorain, Mahoning, Medina, Ottawa, Paulding, Portage, Sandusky, Seneca, Stark, Summit, Trumbull, Warren, and Williams Counties
- Area 3: Remaining Counties

ELECTRICIANS:

- Area 1: Adams, Jackson (all but Coal, Jackson, Liberty, Milton and



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- Washington Townships), Pike (Townships of Camp Creek, Marion, Newton, Scioto, Sunfish, and Union), and Scioto Counties
- Area 2: Allen, Auglaize, Hardin, Logan, Mercer, Shelby, Van Wert, and Wyandot (west of Crane, Pitt, and Tymochtee Townships) Counties
- Area 3: Ashland, Crawford, Huron (Townships of Greenwich, New Haven, Richmond, and Ripley), Knox (North half including Clinton, Howard, Liberty, Monroe, and Union Townships), Marion, Morrow, Richland, and Wyandot (Remainder of County) Counties
- Area 4: Ashtabula County (all but Colebrook, Orwell, Wayne, Williamsfield and Windsor Townships)
- Area 5: Ashtabula (Remainder of County), Geauga (Townships of Auburn, Middlefield, Parkman, and Troy), Mahoning (Milton Township), Portage (Townships of Charlestown, Edinburg, Freedom, Hiram, Palmyra, Paris, and Windham), and Trumbull (except Hubbard and Liberty Townships) Counties
- Area 6: Athens, Meigs, Monroe, Morgan, Noble, Vinton (East of Clinton, Elk and Swan Townships), and Washington Counties
- Area 7: Belmont County
- Area 8: Brown, Clermont, and Hamilton Counties
- Area 9: Butler and Warren (excluding Clear Creek, Franklin and Wayne Townships) Counties
- Area 10: Carroll (South of Fox, Harrison, Rose and Washington Townships), Harrison and Jefferson Counties
- Area 11: Carroll (Remainder of County), Columbiana (Knox Township), Holmes, Mahoning (Smith Township); Stark, Tuscarawas (North half excluding Townships of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, and Bucks), and Wayne (South of Baughman, Chester, Green, and Wayne Townships) Counties
- Area 12: Champaign, Clark and Madison (Townships of Paint, Pike, Somerford, Stokes and Union) Counties
- Area 13: Clinton, Darke, Greene, Miami, Montgomery, Preble, and Warren (Remainder of County) Counties
- Area 14: Columbiana County (except Townships of Butler, Fairfield, Knox, Perry, Salem and Unity)
- Area 15: Columbiana (Townships of Butler, Fairfield, Perry, Salem and Unity), Mahoning (excluding Milton and Smith Townships), and Trumbull (Townships of Hubbard and Liberty) Counties
- Area 16: Coshocton, Guernsey, Knox (Jackson, Clay, Morgan, Miller, Milford, Hilliar, Butler, Harrison, Pleasant, and College Townships), Licking, Muskingum, Perry, and Tuscarawas (South half including Townships of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, and Bucks) Counties
- Area 17: Cuyahoga, Geauga (Townships of Bainbridge, Chester and Russell), and Lorain (Township of Columbia) Counties
- Area 18: Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams and Wood Counties
- Area 19: Delaware, Fairfield, Franklin, Madison (Remainder of County), Pickaway (excluding Deer Creek, Perry, Pickaway, Salt Creek and Wayne Townships), and Union Counties
- Area 20: Erie and Huron (Remainder of County) Counties
- Area 21: Fayette, Highland, Hocking, Jackson (Remainder of County), Pickaway (Remainder of County), Pike (Remainder of County), Ross, and Vinton Counties
- Area 22: Gallia and Lawrence Counties
- Area 23: Geauga (except Auburn, Bainbridge, Chester, Middlefield, Parkman, Russell, and Troy Townships), and Lake Counties
- Area 24: Lorain (Remainder of County), and Medina (Townships of



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Litchfield and Liverpool) Counties

Area 25: Medina (Remainder of County), Portage (excluding Townships of Charlestown, Edinburg, Freedom, Hiram, Palmyra, Paris, and Windham), Summit, and Wayne (remainder of County) Counties

IRONWORKERS:

Area 1: Adams (East half), Gallia, Jackson (South half), Lawrence, Pike (South half), and Scioto Counties

Area 2: Adams (West half), Brown, Butler (South half), Clermont, Clinton (South of a line drawn from Blanchester to Lynchburg), Hamilton, Highland (excluding Eastern 1/5 and portion of County inside lines drawn from Marshall to Lynchburg and from the North County Line through East Monroe to Marshall), and Warren (South half) Counties

Area 3: Allen (South half), Auglaize, Butler (North half), Champaign (West 2/3), Clark (West 3/4), Clinton (excluding South of a line drawn from Blanchester to Lynchburg), Darke, Greene, Highland (inside lines drawn from Marshall to Lynchburg and from the North County Line through East Monroe to Marshall), Logan (West 2/3), Mercer (South half), Miami, Montgomery, Preble, Shelby, and Warren (North half) Counties

Area 4: Allen (North half), Defiance (except portion South of a line drawn from where Rt. #66 meets the North line through Independence to the East County border), Mercer (North half), Paulding, Putnam (except portion East of a line drawn from the North border down through Miller City to where 696 meets the South border), Van Wert, and Williams (except portion East of a line drawn from Pioneer through Stryker to the South border) Counties

Area 5: Ashland, Carroll, Columbiana (W. of a line from Damascus to Highlandtown), Coshocton (E. of a line beginning at NW Co. line going through Walhonding & Tunnel Hill to the south Co. line), Holmes, Huron (S. of Old Rte. #224), Mahoning (S. of Old Rte. #224), Medina (S. of Old Rte. #224), Portage (S. of Old Rte. #224), Richland, Stark, Summit (S. of Old Rte. #224, exclu. city limits of Barberton), Tuscarawas, & Wayne Counties

Area 6: Ashtabula County (E. part, including Kingsville, Sheffield, Denmark, Dorset, Cherry Valley, Wayne, Monroe, Pierpont, Richmond, Andover & Williamsfield Twps., and the easternmost portion of Ashtabula, Plymouth, Jefferson, Lennox, New Lyme, & Colebrook Twps.)

Area 7: Ashtabula (W. part, excluding Kingsville, Sheffield, Denmark, Dorset, Cherry Valley, Wayne, Monroe, Pierpont, Richmond, Andover & Williamsfield Twps., but including the Westernmost portion of Ashtabula, Plymouth, Jefferson, Lennox, New Lyme, & Colebrook Twps.), Cuyahoga, Erie (E. 2/3), Geauga, Huron (E. of a line drawn from the North border through Monroeville & Willard), Lake, Lorain, Medina (N. of old Rte. #224), Portage (W. of a line from Middlefield to Shalersville to Deerfield) & Summit (N. of old Rte. #224, including city limits of Barberton) Counties

Area 8: Columbiana (E. of a line from Damascus to Highlandtown), Mahoning (N. of old Rte. #224), Portage (E. of a line from Middlefield to Shalersville to Deerfield), & Trumbull Counties

Area 9: Athens, Meigs, Morgan, Noble and Washington Counties

Area 10: Belmont, Guernsey, Harrison, Jefferson, Monroe, and Muskingum (except portion West of a line starting at Adams Mill going to Adamsville and going from Adamsville through Blue Rock to the South border) Counties

Area 11: Champaign (Eastern 1/3), Clark (Eastern 1/4), Coshocton



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(West of a line beginning at Northwestern County line going through Walhonding and Tunnel Hill to the South County line), Crawford (South of Route 30), Delaware, Fairfield, Fayette, Franklin, Hardin (except a line drawn from Roundhead to Maysville), Highland (Eastern 1/5), Hocking, Jackson (North half), Knox, Licking, Logan (Eastern 1/3), Madison, Marion, Morrow, Muskingum (West of a line starting at Adams Mill going to Adamsville and going from Adamsville through Blue Rock to the South border), Perry, Pickaway, Pike (North half), Ross, Union, Vinton, and Wyandot (South of Route 30) Counties

Area 12: Crawford (area between lines drawn from where Highway 598 and 30 meet through North Liberty to the North border and from said Highway junction point due West to the border), Defiance (South of a line drawn from where Route 66 meets the North line through Independence to the East County border), Erie (Western 1/3), Fulton Hancock, Hardin (North of a line drawn from Maysville to a point 4 miles South of the North line on the East line), Henry, Huron (West of a line drawn from the North border through Monroeville and Willard), Lucas, Ottawa, Putnam (East of a line drawn from the North border down through Miller City to where 696 meets the South border), Sandusky, Seneca, Williams (East of a line drawn from Pioneer through Stryker to the South border), Wood and Wyandot (Area North of Route #30) Counties

PAINTERS:

Area 1: Adams, Highland, Jackson (W 1/2), Pike and Scioto Counties

Area 2: Allen, Auglaize, Champaign, Defiance, Hardin, Logan, Mercer, Paulding, Putnam, Shelby, Van Wert, and Williams Counties

Area 3: Ashland, Crawford, Marion, Morrow, and Richland Counties

Area 4: Ashtabula, Cuyahoga, Geauga, Lake, Portage (North of the Ohio Turnpike), and Summit (North of the Ohio Turnpike) Cos.

Area 5: Athens and Hocking Counties

Area 6: Belmont, Harrison, and Jefferson Counties

Area 7: Brown, Clermont and Hamilton Counties

Area 8: Butler, Clinton and Warren Counties

Area 9: Carroll, Coshocton, Holmes, Stark, Tuscarawas, and Wayne Counties

Area 10: Clark and Madison Counties

Area 11: Darke, Greene, Miami, Montgomery, and Preble Counties

Area 12: Columbiana, Mahoning, Portage (Ravenna Ordnance Depot), and Trumbull Counties

Area 13: Delaware, Fairfield, Fayette, Franklin, Pickaway, Ross, and Union Counties

Area 14: Erie, Hancock, Huron, Sandusky, Seneca, and Wyandot Counties

Area 15: Fulton, Henry, Lucas, Ottawa, and Wood Counties

Area 16: Gallia, Jackson (E 1/2), Lawrence, Meigs, and Vinton Counties

Area 17: Knox, Licking, Muskingum, and Perry Counties

Area 18: Medina, Portage (up to and including the Ohio Turnpike), and Summit (up to and including the Ohio Turnpike) Counties

Area 19: Monroe, Morgan, Noble, and Washington Counties

PLUMBERS; STEAMFITTERS; and PIPEFITTERS:

Area 1: Adams, Athens, Gallia, Highland, Jackson, Lawrence, Pike, Scioto, and Vinton Counties

Area 2: Allen, Auglaize, Hardin, Mercer, Shelby, and Van Wert



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Counties

- Area 3: Ashland, Crawford, Erie, Huron, Knox, Lorain, Morrow, Richland, and Wyandot Counties
- Area 4: Ashtabula, Cuyahoga, Geauga, Lake, Medina (North of Route 18 excluding City of Medina), Portage (North of #303), Summit (North of Route #303, excluding City of Hudson) Counties
- Area 5: Belmont, Monroe (North of Route 78) Counties
- Area 6: Brown, Clermont, Hamilton, & Warren (S 1/3) Counties
- Area 7: Butler, and Warren (N 2/3, N. of Rte. #63, exclu. Lebanon & S. Lebanon) Counties
- Area 8: Carroll (except Townships of Rose, Monroe, Union, Lee, Orange, Perry, and Loudon), Stark and Wayne Counties
- Area 9: Carroll (Townships of Rose, Monroe, Union, Lee, Orange, Perry and Loudon), Coshocton, Guernsey, Holmes, Morgan (South of State Route #78 and from McConnelsville West on State Route #37 to the Perry County Line), Muskingum, Noble, and Tuscarawas Counties
- Area 10: Champaign, Clark, Greene (Townships of Cedarville, Ceasars Creek, New Jasper, Jefferson, and Ross), Logan, and Madison (West of Route #38 including the City of London) Counties
- Area 11: Clinton, Darke, Fayette, Greene (Remainder of County), Miami, Montgomery, and Preble Counties
- Area 12: Columbiana (excluding Washington and Yellow Creek Townships and Liverpool Township, sections 35 and 36 - West of County Road #427), Mahoning, and Trumbull (Hubbard and Liberty Townships, Youngstown Municipal Airport and the Filtration Plant of the Mahoning Valley Sanitary District) Counties
- Area 13: Columbiana (Washington and Yellow Creek Townships and Liverpool Township Sections 35 and 36 West of County Road #427), Harrison and Jefferson Counties
- Area 14: Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, and Wood Counties
- Area 15: Delaware, Fairfield, Franklin, Hocking, Licking, Madison (Remainder of County), Marion, Perry, Pickaway, Ross, and Union Counties
- Area 16: Medina (Remainder of County), Portage (South of Route #303), and Summit (South of Route #303) Counties
- Area 17: Meigs, Monroe (Remainder of County), Morgan (Remainder of County), and Washington Counties
- Area 18: Trumbull County (Remainder of County)

LINE CONSTRUCTION:

- Area 1: Adams, Athens, Gallia, Lawrence, Meigs, Scioto, Jackson (except Coal, Jackson, Liberty, Milton, and Washington Townships), Pike (Townships of Camp Creek, Marion, Newton, Scioto, Sunfish, and Union), and Vinton (East of Clinton, Elk and Swan Townships) Counties
- Area 2: Allen, Auglaize, Hardin, Logan, Mercer, Shelby, Van Wert, Wyandot (Townships of Crawford, Jackson, Marseilles, Mifflin, Richland, Ridge and Salem) Counties
- Area 3: Ashland, Crawford, Huron (Townships of Richmond, New Haven, Ripley and Greenwich), Knox (Townships of Liberty, Clinton, Union, Howard, Monroe, Middlesbury, Morris, Wayne, Berlin, Pike, Brown and Jefferson), Marion, Morrow, Richland, and Wyandot (Townships of Sycamore, Crane, Eden, Pitt, Antrim and Tymochtee) Counties
- Area 4: Ashtabula County (except Townships of Colebrook, Orwell, Wayne, Williamsfield, and Windsor)
- Area 5: Ashtabula (Townships of Colebrook, Wayne, Orwell,



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- Williamsfield, and Windsor), Columbiana (Townships of Butler, Fairfield, Perry, Salem, and Unity), Geauga (Townships of Auburn, Middlefield, Parkman, Burton, and Troy), Mahoning (excluding Smith Township), Portage (Charlestown, Edinburg, Freedom, Hiram, Nelson, Palmyra, Paris, and Windham Townships), and Trumbull Counties
- Area 6: Belmont County
- Area 7: Brown, Clermont and Hamilton Counties:
- Area 8: Butler and Warren (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union and Washington Townships) Counties
- Area 9: Carroll (Northern half including Fox, Harrison, Rose and Washington Townships), Columbiana (Knox Township), Holmes, Mahoning (Smith Township), Stark, Tuscarawas (North of Auburn, Clay, Rush, and York Townships), and Wayne (South of Baughman, Chester, Green and Wayne Townships) Counties
- Area 10: Carroll (South of Fox, Harrison, Rose, and Washington Townships), Harrison and Jefferson Counties
- Area 11: Champaign, Clark and Madison (except Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range, and Pleasant Townships) Counties
- Area 12: Clinton, Darke, Greene, Miami, Montgomery, Preble, and Warren (Wayne, Clear Creek, and Franklin Townships) Counties:
- Area 13: Columbiana County (Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middleton, St. Clair, Washington, Wayne, West and Yellow Creek Townships)
- Area 14: Coshocton, Guernsey, Muskingum, Perry, and Tuscarawas (Remainder of County) Counties
- Area 15: Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, and Wood Counties
- Area 16: Delaware, Madison (Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range and Pleasant Townships), Pickaway (Townships of Circleville, Darby, Harrison, Jackson, Madison, Monroe, Muhlenberg, Scioto, Walnut, and Washington), and Union Counties
- Area 17: Erie and Huron (Lyme, Ridgefield, Norwalk, Townsend, Wakeman, Sherman, Peru, Bronson, Hartland, Clarksfield, Norwich, Greenfield, Fairfield, Fitchville, and New London Townships) Counties
- Area 18: Fairfield, Knox (Butler, Clay, College, Harrison, Hilliar, Jackson, Morgan, Milford, Miller, and Pleasant Townships), and Licking Counties
- Area 19: Fayette, Highland, Hocking, Jackson (Coal, Jackson, Liberty, Milton and Washington Townships), Pickaway (Deer Creek, Perry, Pickaway, Salt Creek and Wayne Townships), Pike (excluding Camp Creek, Marion, Newton, Scioto, Sunfish, and Union Townships), Ross, and Vinton (Western half of County, including Clinton, Elk and Swan Townships) Counties
- Area 20: Franklin County
- Area 21: Geauga (excluding Bainbridge, Burton, Chester, Russell, Auburn, Middlefield, Parkman and Troy Townships), and Lake Counties
- Area 22: Lorain (excluding Columbia Township), and Medina (Litchfield and Liverpool Townships) Counties
- Area 23: Medina (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinckley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield, and York Townships), Portage (Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro, and Suffield Townships), Summit, and Wayne (Northern half of County) Counties



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Area 24: Monroe, Morgan, Noble and Washington Counties
Area 25: Cuyahoga, Geauga (Bainbridge, Russell and Chester Townships), Lorain (Columbia Township) Counties.

LABORERS

(Excluding Railroad Maintenance, Renovation, and Repair)

Zone 1: Cuyahoga, Geauga and Lake Counties
Zone 2: Ashtabula, Erie, Huron, Lorain, Lucas, Mahoning, Medina, Ottawa, Portage, Stark, Summit, Trumbull, and Wood Counties
Zone 3: Remainder of Counties

Group 1: Asphalt Laborer; Carpenter Tender; Concrete Curing Applicator; Dump Man (Batch Trucks); Grade Checker; Guardrail and Fence Installers; Joint Setter; Laborers (construction); Landscape Laborer; Mesh Handlers and Placers; Right-of-way Laborers; Riprap Laborer and Grouter; Scaffold Erector; Seal Coating; Surface Treatment or Road Mix Laborer; Sign Installer; Slurry Seal; Utility Man or Handyman; Waterproofing Laborer; and Flagmen

Group 2: Asphalt Raker; Concrete Puddler; Kettle Man (Pipeline); Machine Driven Tools; Mason Tender; Mortar Mixer; Power Buggy or Power Wheelbarrow; Sheeting and Shoring Man; Surface Grinder Man; Paint Stripper; and Plastic Flushing Machine Operator

Group 3: Air Track and Wagon Drill; Bottom Man; Car Pusher (without air); Cofferdam (below 25 feet deep); Concrete Saw Man; Cutting with Burning Torch; Form Setter; Hand Spiker (Railroad); Pipelayer; Tunnel Laborer (without air) and Caisson; Undergroundman (working in Sewer and Waterline, Cleaning, Repairing and Reconditioning); Welder Tender (Pipeline); & Sandblaster Nozzleman

Group 4: Blaster; Muckers; Powder Man; Top Lander; Wrencher (Mechanical Joints and Utility Pipeline); and Varner

Group 5: Concrete Crew in Tunnels; Curb Setter and Cutter; Gunnite Nozzle Man; Miner without air; Utility Pipeline Tapper; Waterline Caulker; & Welder

POWER EQUIPMENT OPERATORS

Zone 1 - Columbiana, Mahoning, and Trumbull Counties

Class 1: Asphalt Heater Planer; Austin Western and similar type; Backhoe; Batch Plant-Central Mix; Batch Plant-Portable Concrete; Berm Builder-Automatic; Backfiller with drag attachments; Boat Derrick; Boat-Tug; Boring Machine attached to Tractor; Bulldozer; C.M.I. Road Builder and similar types; Cable Placer and Layer; Carrier-Straddle; Carryall-Scraper or Scoop; Chicago Boom; Compactor with blade attached; Concrete Spreader Finisher Combination (Bidwell Machine); Crane; Crane-stationary or climbing; Crane-Electric Overhead; Crane rough-terrain; Crane-Side Boom; Crane Truck; Crane-Tower; Derrick-Boom; Derrick-Car; Diggers-wheel (not Trencher or Road Widener); Double Nine; Drag Line; Dredge; Drill-Kenny or similar type; Easy Pour Median Barrier Machine or similar



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type); Electromatic; Frankie Pile; Gradall; Grader-power; Gurry; Gurry-self-propelled; High Lift; Hoist-Monorail; Hoist-Stationary and Mobile Tractor; and Seagoing vehicle; Loader-Elevating; Loader-Front End; Locomotive; Mechanic as Welder; Metro Chip Harvester with Boom; Mucking Machine; Paver-Asphalt Finishing Machine; Paver-Road Concrete; Paver-Slipform; Place Crete Machine; Post Driver; Power Driven Hydraulic Pumps and Jacks; Pump Crete Machine; Regulator-Ballast; Hydraulic Power Unit not attached to Rig for Pile Drilling; Rigs-Drilling; Shovels; Spike-master; Stonecrusher; Tie Puller and Loader; Tie Tamper; Tractor-double boom; Tractor with attachments; Trucks-Boom; Truck-tire- assigned to job; Trench Machine; Tunnel Machine (Mark 21 Java or similar); Whirley

Class 2: Asphalt Plant; Bending Machine; (pipeline or similar type); Boring Machine (motor driven); Chip Harvester without boom; Cleaning Machine, Pipeline type; Coating Machine, Pipeline type; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift Walk Behind (hoisting over one buck high); Form Line Machine; Grease Truck Operator; Grout Pump; Gunnite Machine; Huck Bolting Machine; Hydraulic Scaffold; Paving Breaker; (Self-propelled or ridden); Pipe Dream; Pot Fireman (power agitated); Power Broom; Refrigeration Plant; Sasgen Derrick; Seeding Machine; Self-propelled Mobile Vibrator Compactor or Roller; Hoist, single drum; Soil Stabilizer (Pump type); Spray Cure Machine, self-propelled; Straw Blower Machine; Sub-grader; Tube Finisher or Broom C.M.I. or similar type; Tugger Hoist

Class 3: Batch Plant, job related; Boiler Operator; Curb Builder (self-propelled); Forklifts and lulls; Generator, steam; Hydraulic Manipulator Crane; Jack, hydraulic power driven; Mixer, Concrete; Mulching Machine; Pin Puller; Pulverizer; Pump; Road Finishing Machine (Pull type); Roller; Saw, concrete, self-propelled; Signalperson; Spray Cure Machine, motor powered; Spreader (Side Deliver Shoulder attachment); Stump Cutter; Tractor; Trencher, Form; Water Blaster

Class 4: Air Curtin Destructor and similar type; Brake Man; Compressor; Conveyor; Conveyor 12 feet or under other than servicing Bricklayers; Deck Hand; Drill Wagon; Fireman; Generator Sets; Heaters, portable power (2 to 5); Ladavator; Roller (Walk behind, 1 ton and over dead weight); Steam Jenny; Syphons; Mechanic Tender, Jack Hydraulic (Railroad); Vibrator, gasoline; Welding Machines (2) (fuel burning)

Class 5: Oiler

Class 6: Rigs, Pile Driving or Caisson type; Rigs (Pile Hydraulic Unit attached)

Zone 2 - Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, Medina, Portage and Summit Counties

Zone 3 - Remaining Counties

Class A: Air Compressor on Steel Erection; Asphalt Plant Engineers (Cleveland District only); Boiler Operator on Compressor or Generator when mounted on a rig; Cableways; Combination Concrete Mixer & Tower; Concrete Plants (over 4 yd. cap.); Concrete Pumps; Cranes (including Boom Trucks, Cherry Pickers); Derricks; Draglines;



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Dredges (dipper, Clam or suction); Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Helicopter Crew (operator-hoist or winch); Hoes; Hoisting Engines; Hoisting Engines on Shaft or Tunnel Work; Industrial-type Tractor; Jet Engine Dryer (D8 or D9) Diesel Tractor; Locomotives (Standard Gauge); Maintenance Operator Class A; Mixer, Paving (Single or Double Drum); Mucking Machines; Multiple Scraper; Piledriving Machines; Power Shovels; Quad 9 (double pusher); Refrigerating Machine (Freezer Operation); Rotary Drill on Caisson Work; Side-Booms; Slip-Form Paver; Tower Derrick; Tree Shredder; Trench Machine (over 24" wide); Truck Mounted Concrete Pumps; Tug Boat; Tunnel Machine and/or Mining Machine; Wheel Excavator

Class B: Asphalt Paver; Automatic Subgrader Machine, Self-propelled (CMI type); Boring Machine Operator (more than 48"); Bulldozer; Endloader; Kolman-Loader (production type-Dirt); Lead Grease Man; Maintenance Operators Class B (Exclu. Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, & Medina Counties); Power Grader; Power Scrapers; Push Cat; Trench Machine (24" wide & under)

Class C: A-Frames; Air Compressor on Tunnel Work (low pressure); Asphalt Plant Engineer (Exclu. Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, & Medina Counties); Locomotive (narrow gauge); Mixers, Concrete (more than one bag cap.); Mixers, one bag cap. (side loader); Power Boilers over 15 lb. pressure; Pump Op. installing & operating Well Points; Pumps (4" & over discharge); Rollers - Asphalt; Utility Operator (Small Equipment); Welding Machine & Generators

Class D: Back Filler; Bar, Joint & Mesh Installing Machine; Batch Plant; Boring Machine Operators (48" or less); Bull Floats; Burlap & Curing Machines; Compressor (Portable, Sewer, Heavy, & Highway); Concrete Plant (Cap. 4 yd. & under); Concrete Saw (Multiple); Conveyors (highway); Crushers; Deckhand; Drill, highway (with integral power); Farm-type Tractor with attachments (highway); Finishing Machines; Fireman, Floating Equipment; Fork Lift (highway), except masonry; Form Trenchers; Hydro Hammer; Hydro Seeders; Pavement Breaker; Plant Mixers; Post Driver; Post Hole Digger (power auger); Power Brush Burner; Power Form Handling Equipment; Road Widening Trencher; Rollers (brick, grade, macadam); Self-propelled Power Spreaders; Self-propelled Power Subgraders; Steam Fireman; Tractor (pulling sheepfoot roller or grader); Vibratory Compactors (with integral power)

Class E: Drum Fireman (asphalt Plant); Fork Lift (masonry); Inboard-Outboard Motor Boat - Launch; Power Scrubber; Power Sweeper; Oil Heaters (asphalt plants); Oilers; Power Driven Heaters; Pumps (under 4" discharge); Tenders; Tire Repairmen; & VAC/ALLS

TRUCK DRIVERS

Zone 1 - Cuyahoga, Geauga, and Lake Counties

Class 1: Straight and Dumps (including Asphalt); Straight Fuel

Class 2: Semi Fuel; and Semi Tractor Drivers



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Class 3: Ready-mix (Agitator or non Agitator); Bulk Concrete Drivers; Dry Batch Trucks; Carry-all Driver; Darts; Double Hook-up Tractor Trailers including Team Track and Railroad Siding; Euclids; Extra Long Trailers and Semi Pole Trailers; Fork Lifts; Hi-lifts; Low Boys; Semi-tractor and Tri-axle Trailer; Tag along Trailer; Expandable Trailers; Tandem Tractor and Tandem Trailer and Tri-axle Trailer; Tandem Trailer and Tri-Axle Trailer; Tank Asphalt Spreaders; Tourna-rockers; Loads or Towing Requiring Road Permits

Zone 2 - Remainder of the State

Class 1: Asphalt Distributors; Batch Trucks; 4 Wheel Service Truck; 4 Wheel Dump Trucks; Oil Distributors

Class 2: Tandems

Class 3: Fuel Trucks; Pole Trailers; Ready Mix Trucks; Semi-tractor Trucks; Asphalt Oil Spraybar Man

Class 4: All Trucks, five axle and over

Class 5: Asphalt Oiler Spraybar Man when operated from cab

Class 6: Euclid Wagons; Euclid End Dumps; Heavy Duty Equipment over 12 cu. yd. capacity; Low Boys

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 (29 CFR, 5.5 (a)(1)(11))

DIVISION I - COLLECTION SYSTEM IMPROVEMENTS

AT GROVER HILL, OHIO

B I D

We, the BIDDER, have become familiar with the local conditions affecting the cost of work, and with the Advertisement for Bids, Information to Bidders, Supplemental Information for Bidders, General Conditions of the Contract, Form of Proposal, Form of Contract, Form of Bond, Plans, Drawings, Specifications, all Addenda, and all other Contract Documents for this project.

We do hereby propose to perform everything required for the proper execution of these documents and of all work outlined by them, and to provide and furnish all Bonds, Insurance, Labor, Materials, tools, equipment, and all utility and transportation services required to complete the project as required and implied, in the Contract Documents.

We understand that the prices given for the following list of Bid Items are meant to include all miscellaneous items not specifically mentioned, but required for the proper installation of the complete Contract Work.

DIVISION I - COLLECTION SYSTEM IMPROVEMENTS

AT GROVER HILL, OHIO

B I D S C H E D U L E

Proposal of _____
called "BIDDER", organized and existing under the laws of the State of _____
doing business as _____*,
to the Village of Grover Hill, Ohio
(hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of:

Collection System Improvements

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID, each party thereto certifies as to its own organization, that this BID has been arrived at independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within the time provided in the Proposal. BIDDER further agrees to pay as liquidated damages, the sum provided in the Proposal for each consecutive calendar day thereafter as provided in Section 15 of the General Conditions. If multiple contract divisions are awarded, then the liquidated damages shall be a total of the sums provided for in each respective division proposal a day for multiple contract divisions.

*Insert: "a corporation", "partnership", or "an individual", as applicable.

NOTE: One Bid Schedule and respective submittals are to be executed for each contract division. Do not combine Bid Schedules and respective submittals for more than one contract division bid.

BIDDER acknowledges receipt of the following ADDENDUM:

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following Unit Prices.

NOTE: BIDS shall include all applicable taxes and fees.

BID PROPOSAL
DIVISION I
GROVER HILL SEWAGE WORKS IMPROVEMENTS
PAULDING COUNTY, OHIO

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE IN FIGURES			WRITTEN	EXTENSION
				MATERIALS	LABOR	TOTAL		
BASE BID:								
1.	Mobilization/Demobilization	1	Lump	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2.	Construction Staking	1	Lump	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
3.	Job Signs	1	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
4.	Field Office	1	Lump	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
5.	As-Built Drawings	1	Lump	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
6.	Granular Backfill	5670	C.Y.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
7.	Asphalt Drive Replacement	115	S.Y.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
8.	Asphalt Street Replacement	960	S.Y.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
9.	Asphalt State Highway Replacement	575	S.Y.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
10.	Stone Surface Replacement	690	S.Y.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
11.	Concrete Surface Replacement (Sidewalk)	97	S.Y.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

BID PROPOSAL
DIVISION I
GROVER HILL SEWAGE WORKS IMPROVEMENTS
PAULDING COUNTY, OHIO

UNIT PRICE IN FIGURES

<u>ITEM #</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>MATERIALS</u>	<u>LABOR</u>	<u>TOTAL</u>	<u>WRITTEN</u>	<u>EXTENSION</u>
12.	10" Sanitary Sewer	495	L.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
13.	8" Sanitary Sewer	2745	L.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
14.	6" Sanitary Sewer	2084	L.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
15.	4" Sanitary Sewer Mainline	9558	L.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
16.	4" Sanitary Lateral SDR 26	5748	L.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
17.	4" Sanitary Lateral SDR 35	10155	L.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
18.	Sanitary Manhole - Standard	3	V.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
19.	Sanitary Manhole - Drop	10	V.F.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
20.	4" Cleanouts	103	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
21.	6" Cleanouts	9	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
22.	Wyes - 8" x 4"	25	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

BID PROPOSAL
DIVISION I
GROVER HILL SEWAGE WORKS IMPROVEMENTS
PAULDING COUNTY, OHIO

UNIT PRICE IN FIGURES

<u>ITEM #</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>MATERIALS</u>	<u>LABOR</u>	<u>TOTAL</u>	<u>WRITTEN</u>	<u>EXTENSION</u>
23.	Wyes - 6" x 6"	9	Each.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
24.	Wyes - 6" x 4"	15	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
25.	Wyes - 4" x 4"	188	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
26.	Pump Station - Individual Service	2	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
27.	Septic Tank - 1000 Gal.	193	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
28.	Septic Tank - 2000 Gal.	13	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
29.	School Treatment Plant Revisions	1	L.S.	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
30.	Septic Tank Demolition and Removal	103	Each	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
<u>TOTAL (BASED ON ESTIMATED QUANTITIES):</u>							\$ _____	\$ _____

BID PROPOSAL

DIVISION I

GROVER HILL SEWAGE WORKS IMPROVEMENTS
PAULDING COUNTY, OHIO

UNIT PRICE IN FIGURES

<u>ITEM #</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>MATERIALS</u>	<u>LABOR</u>	<u>TOTAL</u>	<u>WRITTEN</u>
<u>UNIT PRICES FOR "IF ORDERED" ITEMS:</u>							
31.	Unstable Soil Excavation	1	C.Y.	\$ _____	\$ _____	\$ _____	\$ _____
32.	Stone Foundation	1	C.Y.	\$ _____	\$ _____	\$ _____	\$ _____
33.	Rock Excavation	1	C.Y.	\$ _____	\$ _____	\$ _____	\$ _____
34.	12" Drive Pipe - CMP	1	L.F.	\$ _____	\$ _____	\$ _____	\$ _____
35.	15" Drive Pipe - CMP	1	L.F.	\$ _____	\$ _____	\$ _____	\$ _____
36.	12" Drive Pipe - RCP	1	L.F.	\$ _____	\$ _____	\$ _____	\$ _____
37.	15" Drive Pipe - RCP	1	L.F.	\$ _____	\$ _____	\$ _____	\$ _____

S I G N A T U R E S H E E T

DIVISION I - COLLECTION SYSTEM IMPROVEMENTS

AT GROVER HILL, OHIO

In submitting this Proposal, it is understood and agreed by the undersigned that the right is reserved by the Owner to reject any or all Proposals or any Bid Items, for any reason, and that this Proposal may not be withdrawn for a period of sixty (60) days from the opening thereof. In case of discrepancy between Unit Price and Total Bid based on estimated quantities, the Unit Price will govern.

Contract Execution: Upon acceptance of this Contract by the Owner, failure of the undersigned to execute a Contract as specified in the Instructions to Bidders shall void his Proposal and forfeit the

attached bond on _____

Bank of _____

for the sum of _____ Dollars

(\$ _____).

Starting and Completion: If awarded a Contract under this Proposal, the undersigned proposes to start work within fifteen (15) days after the date of the Notice to Proceed and agrees to fully complete all work covered by this Proposal within 360 days thereafter.

For failure to complete the work on or before the appropriate date, the Bidder agrees to pay liquidated damages of Four Hundred and 00/100 Dollars (\$400.00) per day.

DATE: _____ FIRM: _____

By: _____

Title: _____

OFFICIAL ADDRESS: _____

PHONE: () _____

DIVISION II - TREATMENT FACILITY/LAB BUILDING

AT GROVER HILL, OHIO

B I D

We, the BIDDER, have become familiar with the local conditions affecting the cost of work, and with the Advertisement for Bids, Information to Bidders, Supplemental Information for Bidders, General Conditions of the Contract, Form of Proposal, Form of Contract, Form of Bond, Plans, Drawings, Specifications, all Addenda, and all other Contract Documents for this project.

We do hereby propose to perform everything required for the proper execution of these documents and of all work outlined by them, and to provide and furnish all Bonds, Insurance, Labor, Materials, tools, equipment, and all utility and transportation services required to complete the project as required and implied, in the Contract Documents.

We understand that the prices given for the following list of Bid Items are meant to include all miscellaneous items not specifically mentioned, but required for the proper installation of the complete Contract Work.

DIVISION II - TREATMENT FACILITY/LAB BUILDING

AT GROVER HILL, OHIO

B I D S C H E D U L E

Proposal of _____
called "BIDDER", organized and existing under the laws of the State of _____
doing business as _____*,
to the Village of Grover Hill, Ohio
(hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of:

Treatment Facility/Lab Building

in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID, each party thereto certifies as to its own organization, that this BID has been arrived at independently, without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within the time provided in the Proposal. BIDDER further agrees to pay as liquidated damages, the sum provided in the Proposal for each consecutive calendar day thereafter as provided in Section 15 of the General Conditions. If multiple contract divisions are awarded, then the liquidated damages shall be a total of the sums provided for in each respective division proposal a day for multiple contract divisions.

*Insert: "a corporation", "partnership", or "an individual", as applicable.

NOTE: One Bid Schedule and respective submittals are to be executed for each contract division. Do not combine Bid Schedules and respective submittals for more than one contract division bid.

BIDDER acknowledges receipt of the following ADDENDUM:

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following Lump Sum.

NOTE: BIDS shall include all applicable taxes and fees,

BID SCHEDULE

DIVISION II - TREATMENT AND LAB FACILITY
AT GROVER HILL, OHIO
(Lump Sum Bid)

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Price in Figures</u>
1	CONTRACT "GC"			
	GENERAL CONSTRUCTION	Lump Sum	L.S.	\$ _____
	PARKSON CONTRACT	Lump Sum	L.S.	\$ <u>100,000.00 *</u>
	POWER TO PLANT	Lump Sum	L.S.	\$ <u>18,000.00 *</u>
	TOTAL	Lump Sum		\$ _____

(Price in Words)

2	CONTRACT "EC"			
	ELECTRICAL CONSTRUCTION	Lump Sum	L.S.	\$ _____

(Price in Words)

* These costs are estimated costs and are to be used for bidding purposes. When at a future date final agreements are executed between the Owner and Parkson or the Power Company, this Contract amount shall be adjusted accordingly by Change Order.

SEWAGE WORKS IMPROVEMENTS
AT GROVER HILL, OHIO
B I D B O N D R E Q U I R E M E N T S

The foregoing Total Contract Price, by Contract Division, not including any deductibles, shall be the basis for the amount of Bidder's Bond and is as follows:

DIVISION I \$ _____
DIVISION II - CONTRACT(S) _____ \$ _____

TOTAL OF BID -- \$ _____
Bid Bond Percent x 100%
AMOUNT OF BID BOND -- \$ _____

VOLUNTARY DEDUCTIVE PROPOSAL FOR MULTIPLE CONTRACT AWARD

Amount to be deducted, if any, from the Total Contract Price if the Bidder is awarded multiple Divisions:

TOTAL OF BID -- \$ _____
Deduct Offered (Written) _____ Percent
AMOUNT OF DEDUCT (Figures) -- \$ _____

Percentage will be applied to all work including final adjusted contract quantities. Percentage reduction will be used to evaluate bids and award Contracts.

EXPERIENCE RECORD

The BIDDER is required to state the character of previous WORK, give references, and such other detailed information as will enable the OWNER to determine responsibility, including experience, skill and financial standing.

REFERENCE

PHONE NO.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____
_____ as Principal, and
_____ as Surety, are hereby
held and firmly bound unto _____ as OWNER
in the penal sum of _____
for the payment of which, well and truly to be made, we hereby jointly and severally
bind ourselves, successors and assigns.

Signed, this _____ day of _____, 19____.

The Condition of the above obligation is such that whereas the Principal has submitted
to _____ a certain BID,
attached hereto and hereby made a part hereof to enter into a contract in writing, for the

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal (L.S.)

Surety

By: _____

IMPORTANT—Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

NON-COLLUSION AFFIDAVIT

STATE OF _____)
COUNTY OF _____) ss.

_____, being first and duly
sworn, deposes and says that he is _____
(sole owner, partner,
_____, of _____,
president, secretary, etc.)

the party making the foregoing proposal or bid; that such bid
is genuine and not collusive or sham; and said bidder has not
colluded, conspired, connived, or agreed, directly or indirectly,
with any bidder or person, to put in a sham bid, or that such
other person shall refrain from bidding, and has not in any
manner, directly or indirectly, sought by agreement or collu-
sion, or communication or conference, with any person, to fix
the bid price of affiant or any other bidder, or to fix any
overhead, profit or cost element of said bid price, or of that
of any other bidder, or to secure any advantages against

_____, or any person or persons
interested in the proposed contract; and that all statements
contained in said proposal or bid are true; and further, that
such bidder has not, directly or indirectly, submitted this
bid, or the contents thereof, or divulged information or data
relative thereto any association or to any member or agent
thereof.

Affiant

Sworn to and subscribed before me this _____ day of _____, 198

Notary Public in and for

County, _____

My commission expires _____

AFFIDAVIT

(to be filled in and executed if the Contractor is a Corporation)

STATE OF _____)
COUNTY OF _____) ss.

_____, being duly sworn, deposes
and says that he is Secretary of _____,
a Corporation organized and existing under and by virtue of the
laws of the State of _____, and having its
principal office at _____
(Number and Street)

_____, _____ County
(City) (County)
_____,
(State)

Affiant further says that he is familiar with the records,
minute books and by-laws of _____,
(Name of Corporation)

Affiant further says that _____,
(Name of Officer)
_____, of the Corporation is duly authorized to
(Title)
sign the contract for the construction of _____
for said Corporation by virtue of _____
(state whether a provision of

by-laws or a resolution of the Board of Directors. If by

resolution, give of adoption.)

Affiant

Sworn to and subscribed before me _____ this day
of _____, 19__.

My Commission expires _____.

Notary Public _____ in and for _____,
County State

NOTICE OF AWARD

To: _____

PROJECT Description: _____

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated _____, 19 _____, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$ _____.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 19 _____.

Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by _____

this the _____ day of _____, 19 _____

By _____

Title _____

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 19_____, by and between _____, hereinafter called "OWNER"
(Name of Owner), (an individual)

and _____ doing business as (an individual,) or (a partnership,) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within _____ calendar days after the date of the NOTICE TO PROCEED and will complete the same within _____ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$ _____, or as shown in the BID schedule.

5. The term "CONTRACT DOCUMENTS" means and includes the following:

- (A) Advertisement For BIDS
- (B) Information For BIDDERS
- (C) BID
- (D) BID BOND
- (E) Agreement

(F) General Conditions

(G) SUPPLEMENTAL GENERAL CONDITIONS

(H) Payment BOND

(I) Performance BOND

(J) NOTICE OF AWARD

(K) NOTICE TO PROCEED

(L) CHANGE ORDER

(M) DRAWINGS prepared by _____
numbered _____ through _____, and dated _____,
19 _____

(N) SPECIFICATIONS prepared or issued by _____

dated _____, 19 _____

(O) ADDENDA:

No. _____, dated _____, 19 _____

No. _____, dated _____, 19 _____

No. _____, dated _____, 19 _____

No. _____, dated _____, 19 _____

No. _____, dated _____, 19 _____

No. _____, dated _____, 19 _____

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (_____) each of which shall be deemed an original on the date first above written.
(Number of Copies)

OWNER:

BY _____

Name _____
(Please Type)

Title _____

(SEAL)

ATTEST:

Name _____
(Please Type)

Title _____

CONTRACTOR:

BY _____

Name _____
(Please Type)

Address _____

(SEAL)

ATTEST:

Name _____
(Please Type)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership or Individual)

and _____
(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____ Dollars, \$(_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____ 19_____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
(number)
one of which shall be deemed an original, this the _____ day of _____
19 _____.

ATTEST:

(Principal) Secretary
(SEAL) By _____ (s)

(Address)

Witness as to Principal

(Address)

Surety

ATTEST: By _____

Attorney-in-Fact

(Address)

Witness as to Surety

(Address)

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____

_____ Dollars, \$(_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
(Number)
one of which shall be deemed an original, this the _____ day of _____
19____.

ATTEST:

(Principal) Secretary

(SEAL)

(Witness as to Principal)

(Address)

ATTEST:

(Surety) Secretary

(SEAL)

Witness as to Surety

(Address)

Principal

By _____ (s)

(Address)

Surety

By _____
Attorney-in-Fact

(Address)

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

AFFIDAVIT

STATE OF OHIO)
) SS:
COUNTY OF Paulding)

_____ being first duly sworn
deposes and says as follows:

1. That he holds the office of _____
_____ in the _____
_____ Company, which company duly executed a contract
with the Village of Grover Hill, _____ Ohio under date of
_____;

2. That said company has complied in all respects with the
Village of Grover Hill, _____ Ohio Income Tax Ordinances and
Regulations, as the same pertain to said construction project;

3. More affiant sayeth not.

Sworn to and subscribed in my presence this _____ day of _____,
1987, at _____, Ohio.

Notary Public

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, _____, the duly
authorized and acting legal representative of _____
_____, do hereby certify as follows:

I, have examined the attached contract(s) and surety bonds and the
manner of execution thereof, and I am of the opinion that each of the
aforesaid agreements has been duly executed by the proper parties thereto
acting through their duly authorized representatives; that said represent-
atives have full power and authority to execute said agreements on behalf
of the respective parties named thereon; and that the foregoing agreements
constitute valid and legally binding obligations upon the parties executing
the same in accordance with terms, conditions and provisions thereof.

Date: _____

NOTICE TO PROCEED

To: _____

Date: _____
Project: _____

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 19_____, on or before _____, 19_____, and you are to complete the WORK within _____ consecutive calendar days thereafter. The date of completion of all WORK is therefore _____, 19_____.

Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by _____

this the _____ day
of _____, 19_____

By _____

Title _____

GENERAL CONDITIONS

1. Definitions
2. Additional Instructions and Detail Drawings
3. Schedules, Reports and Records
4. Drawings and Specifications
5. Shop Drawings
6. Materials, Services and Facilities
7. Inspection and Testing
8. Substitutions
9. Patents
10. Surveys, Permits, Regulations
11. Protection of Work, Property, Persons
12. Supervision by Contractor
13. Changes in the Work
14. Changes in Contract Price
15. Time for Completion and Liquidated Damages
16. Correction of Work
17. Subsurface Conditions
18. Suspension of Work, Termination and Delay
19. Payments to Contractor
20. Acceptance of Final Payment as Release
21. Insurance
22. Contract Security
23. Assignments
24. Indemnification
25. Separate Contracts
26. Subcontracting
27. Engineer's Authority
28. Land and Rights-of-Way
29. Guaranty
30. Arbitration
31. Taxes

1. DEFINITIONS

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.2 ADDENDA—Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 BID—The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 BIDDER—Any person, firm or corporation submitting a BID for the WORK.

1.5 BONDS—Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6 CHANGE ORDER—A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 CONTRACT DOCUMENTS—The contract, including Advertisement For Bids, Information For Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 CONTRACT PRICE—The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 CONTRACT TIME—The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 CONTRACTOR—The person, firm or corporation with whom the OWNER has executed the Agreement.

1.11 DRAWINGS—The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.12 ENGINEER—The person, firm or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER—A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD—The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED—Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.16 OWNER—A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

1.17 PROJECT—The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE—The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS—All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS—A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR—An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.22 SUBSTANTIAL COMPLETION—That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS—

Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER—Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK—All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE—Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1. The dates at which special detail drawings will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. DRAWINGS AND SPECIFICATIONS

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. SHOP DRAWINGS

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. MATERIALS, SERVICES AND FACILITIES

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the

CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. INSPECTION AND TESTING

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. SUBSTITUTIONS

8.1 Whenever a material, article or piece of equip-

ment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. SURVEYS, PERMITS, REGULATIONS

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR

observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. SUPERVISION BY CONTRACTOR

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

13.1 The OWNER may at any time, as the need arises,

order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

(a) Unit prices previously approved.

(b) An agreed lump sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation

order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR

will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the Contract. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK exe-

cuted and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. PAYMENTS TO CONTRACTOR

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER's title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.

19.2 The request for payment may also include an allowance for the cost of such major materials and

equipment which are suitably stored either at or near the site.

19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUB-CONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BONDS.

21. INSURANCE

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified:

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any

operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

22. CONTRACT SECURITY

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by

the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. ASSIGNMENTS

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. INDEMNIFICATION

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. SEPARATE CONTRACTS

25.1 The OWNER reserves the right to let other con-

tracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefor as provided in Sections 14 and 15.

26. SUBCONTRACTING

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. ENGINEER'S AUTHORITY

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The

ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28. LAND AND RIGHTS-OF-WAY

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. GUARANTY

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be

necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. ARBITRATION

30.1 All claims, disputes and other matters in question arising out of or relating to the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 20, shall be decided by arbitration, only if mutually agreed to by the Owner and Contractor.

30.2 Any arbitration shall conform to 40CFR 33.1030-7.

30.3 Any arbitration based settlement or award must include findings of fact, allocation of award to each issue, conclusions of law, basis of award and rationale.

31. TAXES

31.1 The CONTRACTOR will pay all taxes required by the law of the place where the WORK is performed.

32. CLEAN AIR ACT

32.1 The CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act.

40 CFR PART 35

APPENDIX C-2—REQUIRED PROVISIONS—CONSTRUCTION CONTRACTS

SUPPLEMENTAL GENERAL CONDITIONS

1. General.
2. Changes.
3. Differing Site Conditions.
4. Suspension of Work.
5. Termination for Default; Damages for Delay; Time Extensions.
6. Termination for Convenience.
7. Remedies.
8. Labor Standards.
9. Utilization of Small or Minority Business.
10. Audit; Access to Records.
11. Price Reduction for Defective Cost or Pricing Data.
12. Covenant Against Contingent Fees.
13. Gratuities.
14. Patents.
15. Copyrights and Rights in Data.
16. Prohibition Against Listed Violating Facilities.
17. Buy American.

1. GENERAL

(a) The owner and the contractor agree that the following supplemental general provisions apply to the work to be performed under this contract and that these provisions supersede any conflicting provisions of this contract.

(b) This contract is funded in part by a grant from the U.S. Environmental Protec-

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tion Agency. Neither the United States nor any of its departments, agencies or employees is a party to this contract. This contract is subject to regulations contained in 40 CFR 35.936, 35.938, and 35.939 in effect on the date of execution of this contract.

(c) The owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or under this contract.

2. CHANGES

(a) The owner may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes—

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the owner-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation, or determination) from the owner, which causes any such change, shall be treated as a change order under this clause, if the contractor gives the owner written notice stating the date, circumstances, and source of the order and if the contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the owner shall be treated as a change under this clause or shall entitle the contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly. However, except for claims based on defective specifications, no claim for any change under paragraph (b) of this section 2., shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as there required. Also, in the case of defective specifications for which the owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with such defective specifications.

(e) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under paragraph (b) of this section 2.,

submit to the owner a written statement setting forth the general nature and monetary extent of such claim, unless the owner extends this period. The statement of claim hereunder may be included in the notice under paragraph (b) of this section 2.

(f) No claim by the contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

3. DIFFERING SITE CONDITIONS

(a) The contractor shall promptly, and before such conditions are disturbed, notify the owner in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The owner shall promptly investigate the conditions. If he finds that such conditions do materially differ and cause an increase or decrease in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause, except that the owner may extend the prescribed time.

(c) No claim by the contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

4. SUSPENSION OF WORK

(a) The owner may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the owner.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the owner in administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted

by any other cause, including the fault or negligence of the contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor shall have notified the owner in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

8. TERMINATION FOR DEFAULT; DAMAGES FOR DELAY; TIME EXTENSIONS

(a) If the contractor refuses or fails to prosecute the work, or any separable part of the work, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the owner may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the owner may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and use in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the owner resulting from his refusal or failure to complete the work within the specified time.

(b) If the contract provides for liquidated damages, and if the owner terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs the owner incurs in completing the work.

(c) If the contract provides for liquidated damages and if the owner does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The contractor's right to proceed shall not be terminated nor the contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from causes other than normal weather beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the owner in either its sovereign or contractual capacity, acts of another contractor in the perform-

ance of a contract with the owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from causes other than normal weather beyond the control and without the fault or negligence of both the contractor and such subcontractors or suppliers; and

(2) The contractor, within 10 days from the beginning of any such delay (unless the owner grants a further period of time before the date of final payment under the contract), notifies the owner in writing of the causes of delay. The owner shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension. His findings of fact shall be final and conclusive on the parties, subject only to appeal as the remedies clause of this contract provides.

(e) If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under this clause, or that the delay was excusable under this clause, the rights and obligations of the parties shall be the same as if the notice of termination has been issued under the clause providing for termination for convenience of the owner.

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

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

9. TERMINATION FOR CONVENIENCE

(a) The owner may terminate the performance of work under this contract in accordance with this clause in whole, or from time to time in part, whenever the owner shall determine that such termination is in the best interest of the owner. Any such termination shall be effected by delivery to the contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a notice of termination, and except as otherwise directed by the owner, the contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the work under the contract which is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;

(4) Assign to the owner, in the manner, at the times, and to the extent directed by the owner, all of the right, title, and interest of the contractor under the orders and subcontracts so terminated. The owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the owner to the extent he may require. His approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title to the owner, and deliver in the manner, at the times, and to the extent, if any, directed by the owner, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the owner;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the owner directs or authorizes, any property of the types referred to in paragraph (b)(6) of this clause, but the contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the owner. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the owner to the contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the owner may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the notice of termination; and

(9) Take such action as may be necessary, or as the owner may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which the owner has or may acquire an interest.

(c) After receipt of a notice of termination, the contractor shall submit to the owner his termination claim, in the form and with the certification the owner prescribes. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the owner upon request of the

contractor made in writing within such 1-year period or authorized extension. However, if the owner determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 1-year period or extension. If the contractor fails to submit his termination claim within the time allowed, the owner may determine, on the basis of information available to him, the amount, if any, due to the contractor because of the termination. The owner shall then pay to the contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the contractor and the owner may agree upon the whole or any part of the amount or amounts to be paid to the contractor because of the total or partial termination of work under this clause. The amount or amounts may include a reasonable allowance for profit on work done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the contractor shall be paid the agreed amount. Nothing in paragraph (c) of this clause, prescribing the amount to be paid to the contractor in the event of failure of the contractor and the owner to agree upon the whole amount to be paid to the contractor because of the termination of work under this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the contractor pursuant to this paragraph (d).

(e) If the contractor and the owner fail to agree, as paragraph (d) of this section 8. provides, on the whole amount to be paid to the contractor because of the termination of work under this clause, the owner shall determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall pay to the contractor the amounts determined as follows:

(1) For all contract work performed before the effective date of the notice of termination, the total (without duplication of any items) of—

(i) The cost of such work;

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as paragraph (b)(5) of this clause provides. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made under paragraph (1)(i) of this section 8.; and

(iii) A sum, as profit on paragraph (1)(i) of this section 6., that the owner determines to be fair and reasonable. But, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this paragraph (1) (iii) of this section 6., and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(2) The reasonable cost of the preservation and protection of property incurred under paragraph (b)(9) of this clause; and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the contractor as the result of the termination of work under this contract. The total sum to be paid to the contractor under paragraph (e)(1) of this clause shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the contractor under paragraph (1) of this clause 6., the fair value, as determined by the owner of property which is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the owner, or to a buyer under paragraph (b)(7) of this clause.

(f) The contractor shall have the right to dispute under the clause of this contract entitled "Remedies," from any determination the owner makes under paragraph (c) or (e) of this clause. But, if the contractor has failed to submit his claim within the time provided in paragraph (c) of this clause and has failed to request extension of such time, he shall have no such right of appeal. In any case where the owner has determined the amount due under paragraph (c) or (e) of this clause, the owner shall pay to the contractor the following: (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the owner or (2) If a "Remedies" proceeding is initiated, the amount finally determined in such "Remedies" proceeding.

(g) In arriving at the amount due the contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the contractor, applicable to the terminated portion of this contract, (2) any claim which the owner may have against the contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the contractor or sold, under the provisions of this clause, and not otherwise recovered by or credited to the owner

(h) If the termination hereunder be partial, before the settlement of the terminated portion of this contract, the contractor may file with the owner a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the notice of termination). Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the owner and the contractor to agree upon the amount or amounts to be paid to the contractor for the completion of the continued portion of the contract when the contract does not contain an established contract price for the continued portion.

7. REMEDIES

Unless this contract provides otherwise, all claims, counter-claims, disputes and other matters in question between the owner and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the owner is located.

8. LABOR STANDARDS

The contractor agrees that "construction" work (as defined by the Secretary of Labor) shall be subject to the following labor standards provisions, to the extent applicable:

(a) Davis-Bacon Act (40 U.S.C. 276a-276a-7);

(b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-33);

(c) Copeland Anti-Kickback Act (18 U.S.C. 874); and

(d) Executive Order 11246 (equal employment opportunity);

and implementing rules, regulations, and relevant orders of the Secretary of Labor or EPA. The contractor further agrees that this contract shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA form 5720-4) in effect at the time of execution of this agreement.

9. UTILIZATION OF SMALL AND MINORITY BUSINESS

In accordance with EPA policy as expressed in 40 CFR 35.938-7, the contractor agrees that small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

10. AUDIT, ACCESS TO RECORDS

(a) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935-7 in effect on the date of execution of this contract. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required under 40 CFR 35.938-5 in effect on the date of execution of this contract for any negotiated contract or change order and a copy of the cost summary submitted to the owner. The U.S. Environmental Protection Agency, the Comptroller General of the United States, the U.S. Department of Labor, owner, and (the State water pollution control agency) or any of their authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The contractor will provide proper facilities for such access and inspection.

(b) If this contract is a formally advertised, competitively awarded, fixed price contract, the contractor agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to include paragraphs (a) through (f) of this clause in all his contracts in excess of \$10,000 and all tier subcontracts in excess of \$10,000 and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to the disclosure of all information and reports resulting from access to records under paragraphs (a) and (b) of this clause, to any of the agencies referred to in paragraph (a) of this clause 10., provided that the contractor is afforded the opportunity for an audit exit conference, and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final EPA audit report will include written comments of reasonable length, if any, of the contractor.

(e) Records under paragraphs (a) and (b) of this clause 10., shall be maintained and made available during performance on EPA grant work under this contract and until 3 years from the date of final EPA grant payment for the project. In addition, those records which relate to any "Dispute"

appeal under an EPA grant agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

(f) The right of access which this clause confers will generally be exercised (with respect to financial records) under (1) negotiated prime contracts, (2) negotiated change orders or contract amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price contract, and (3) subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract. However, this right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, such right of access may be exercised under any type of contract or subcontract (1) with respect to records pertaining directly to contract performance, excluding any financial records of the contractor, (2) if there is any indication that fraud, gross abuse, or corrupt practices may be involved or (3) if the contract is terminated for default or for convenience.

11. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(This clause is applicable to (1) any negotiated prime contract in excess of \$100,000; (2) negotiated contract amendments or change orders in excess of \$100,000 affecting the price of a formally advertised, competitively awarded, fixed price contract; or (3) any subcontract or purchase order in excess of \$100,000 under a prime contract other than a formally advertised, competitively awarded, fixed price contract. Change orders shall be determined to be in excess of \$100,000 in accordance with 40 CFR 35.938-5(g). However, this clause is not applicable for contracts or subcontracts to the extent that they are awarded on the basis of effective price competition.)

(a) If the owner or EPA determines that any price (including profit) negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant sums because the contractor, or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA form 5700-41), then such price or cost or profit shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

SUPPLEMENTAL GENERAL CONDITIONS

1. Federal Grant Fund Payment Delays and Ineligibility Rulings:

- A. The Owner shall be responsible for funding and prompt issuance of progress payments legally due on construction work performed by the Contractor or on construction materials properly stored by the Contractor, regardless of any delays in the disbursement to the Owner of any Federal Grant Funds or the denial to the Owner of Federal Grant Funds for items ruled ineligible for such funding.

2. Brooks-Murkowski Compromise - Federal Requirement:

- A. Bids or proposals from a Japanese citizen or national, or firms controlled directly or indirectly by Japanese citizens or nationals, shall be deemed nonresponsive and rejected as set forth in the Continuing Resolution (CR), P.L. 100-202 enacted December 22, 1987. The Bidder will be required to comply with the following:
- B. No subagreement (contract or subcontract) will be made with (1) a Japanese citizen or national; (2) a firm controlled directly or indirectly by Japanese citizens or nationals; or (3) a supplier of any products if more than 50 percent of the total cost of the product is allocable to production or manufacture in Japan.

3. Ineligible Contractors:

- A. Award of Contract shall not be made to Contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32.

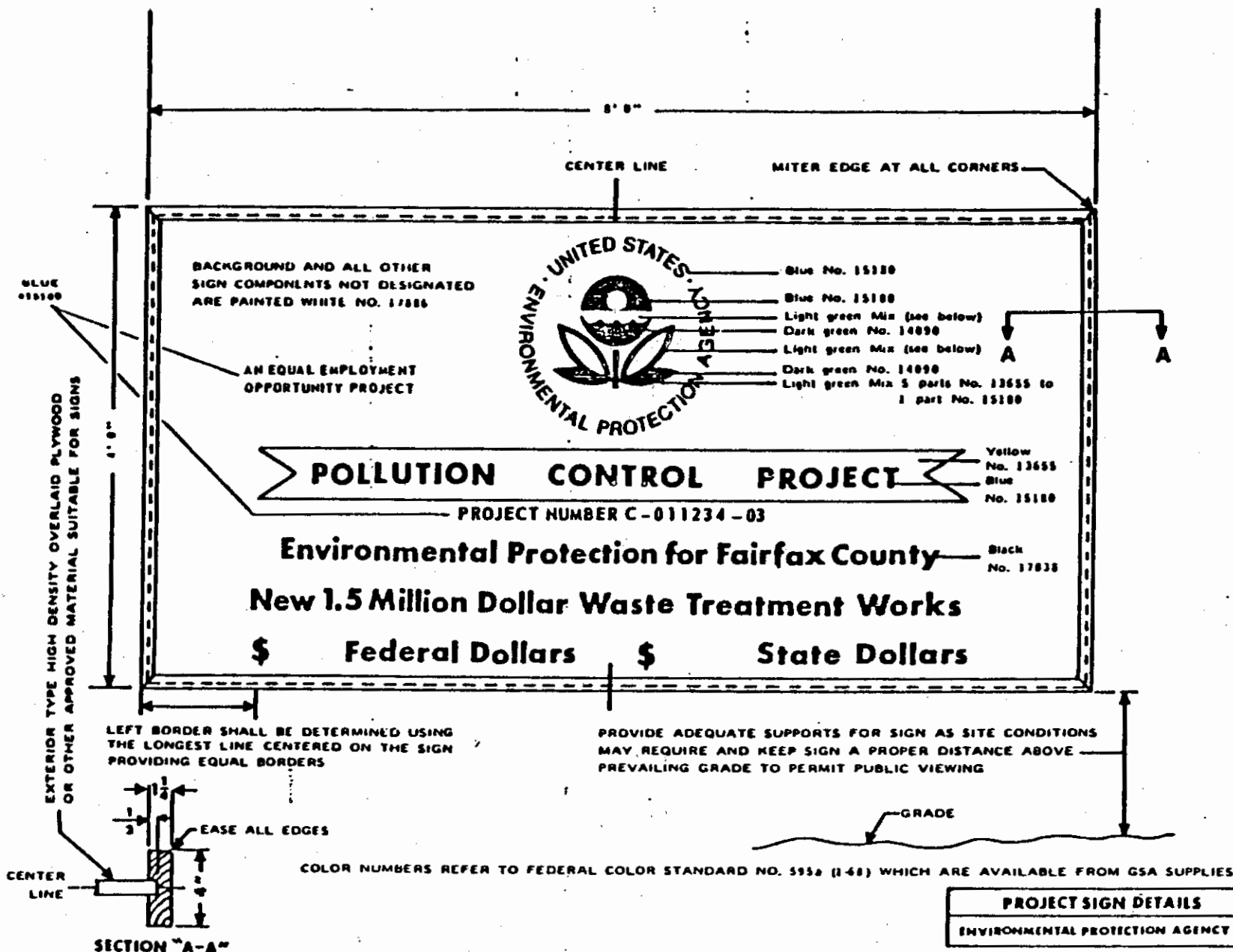
4. Existing Topography, Utilities and Underground Structures:

- A. Existing contours, storm or sanitary sewers, water and gas lines, telephone lines or other underground utilities and structure installations have been shown on the plans according to the best available information. The exact location and elevation of these installations, their protection, support and maintenance during construction operations are the express responsibility of the Contractor. In case of damage to any such installation, the Contractor shall immediately repair or replace it to the satisfaction of the Engineer and affected utility and at the Contractor's expense.

PROTEST PROCEDURES - LOCAL

Should a Bidder have cause to protest the award of a construction contract, the following procedures are established for considering such protest:

1. A written protest shall be delivered to the Village of Grover Hill within three (3) days of the Village stated intention of awarding a construction contract. The written protest shall be delivered by certified mail to the Village Mayor, Village Solicitor and the Engineer.
2. The protest must state specifically the reason(s) for protest, citing exact provisions in the Contract Documents or those contained in prevailing law. All Bidders must be aware that the Village of Grover Hill has the undeniable right to waive what it considers to be minor irregularities in the Bidding process.
3. Upon receipt of the protest, the Village Solicitor and the Engineer shall review the protest and formulate a recommendation to the Village Council. Such recommendation shall be presented to Village Council at the first regularly scheduled Council meeting after receipt of the protest. The Village Council will decide, within 30 days, to either accept the protest as valid and change it's decision on the contract award, or reject the protest. It shall be the sole responsibility of the protestor to pursue the issue further with Ohio EPA, should the protestor so decide.
4. All Bidders must understand that the consideration of protests requires the Village of Grover Hill to expend public monies to pay the costs of expert assistance and advice in the matter. Therefore, no protest shall be considered unless accompanied by payment of One Thousand Dollars (\$1,000.00) to reimburse the Village for such cost.



CHANGE ORDER

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: _____

OWNER: _____

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE:

Original CONTRACT PRICE \$ _____

Current CONTRACT PRICE adjusted by previous CHANGE ORDER \$ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased)
by: \$ _____

The new CONTRACT PRICE including this CHANGE ORDER will be \$ _____

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar days.

The date for completion of all work will be _____ (Date).

Approvals Required:

To be effective this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

Federal Agency Approval (where applicable) _____

ARCHITECT'S PROJECT NO:

Use Column I on Contracts where variable retainage for line items may apply.

[illegible]

ACP-2

