

IDAHO ENVIRONMENTAL COALITION, LLC

**SUPPLEMENTAL PROVISIONS FOR
CONSTRUCTION**

1. DEFINITIONS – See General Provisions

2. ORDER OF PRECEDENCE – See General Provisions

3. PERFORMANCE AND PAYMENT BONDS – derived from FAR Part 28

3.1 The “original Order Price,” as used in this provision, means the award price of the Order. The original Order Price does not include the price of any options, except those options exercised at the time of the Order award. If the resulting Order Price is \$150,000 or more, the Subcontractor shall furnish performance and payment bonds to the authorized procurement representative as follows:

- Performance Bonds. The penal amount of performance bonds at the time of Order award shall be one hundred (100) percent of the original Order price and cover the complete period of performance.
- Payment Bonds. The penal amount of payment bonds at the time of Order award shall be one hundred (100) percent of the original Order price and cover the complete period of performance.

3.2 If the original Order price is between \$30,000 and \$150,000, the Subcontractor is required to provide only a payment bond in accordance with the above requirements.

3.3 The Company may require additional performance and payment bond protection if the Order price is increased. The increase in protection will generally be equal to one hundred (100) percent of the increase in the Order Price. The Subcontractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Company’s Order Administrator within ten (10) calendar days after receipt of Notice of Award or Order execution, whichever is earlier, but in any event, before starting Work.

3.4 The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be accessed at the Treasury Department Website: <http://www.fms.treas.gov>.

3.5 Bonds shall be submitted on the Company’s Performance and Payment Forms to the Company’s SA.

4. CHANGES/MODIFICATIONS

4.1 Change Terms

4.1.1 The Company’s SA or the Company’s Subcontracts Manager are the only individuals authorized to bind the Company contractually in performance of Work under this Order.

4.1.2 Any failure by Subcontractor to assess requirements described in the Work shall not be accepted as a basis for entitlements to an equitable adjustment pursuant under this Article.

4.1.3 No Subcontractor claim is allowed after final payment under this Order.

4.1.4 The Subcontractor shall continue performing Work while any Subcontractor Modification request is pending. However, the Subcontractor shall not start the additional Work until the Company provides written approval.

- 4.1.5 If the Work is reduced by modification, such action will not constitute a claim for damages based on loss of anticipated profits. However, failure to agree to any adjustment shall be a dispute within the meaning of the Article of these General Provisions entitled “Disputes.”
- 4.1.6 Nothing herein will be construed as relieving Subcontractor of its obligations to perform, including without limitation, the failure of the Parties to agree upon Subcontractor entitlement to, or the amount of, any adjustment in price or period of performance.
- 4.1.7 Company shall not be liable for, and Subcontractor hereby waives, any claim or potential claim in which Subcontractor did not report a modification in accordance with the provisions of this Article.
- 4.1.8 Except as may be expressly set forth in this Order and with the government contracting officer's express consent, this Subcontractor shall not acquire any direct claim or direct course of action against the U.S. Government.

4.2 FAR 52.243-1, Changes – Fixed Price Under Simplified Acquisition Threshold (\$250,000) (Aug 1987)-Alternate III (Apr 1984), Modified

- (a) The [Company] may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this [Order] in the services to be performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this [Order], whether or not changed by the order, the [Company] shall make an equitable adjustment in the [Order] price, the delivery schedule, or both, and shall modify the [Order].
- (c) The [Subcontractor] must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. [Subcontractor shall submit an Information Review/Change Order (“IRCO Form”), FRM-2210]. However, if the [Company] decides that the facts justify it, the [Company] may receive and act upon a proposal submitted before final payment of the [Order].
- (d) If the [Subcontractor’s] proposal includes the cost of property made obsolete or excess by the change, the [Company] shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the [Subcontractor] from proceeding with the [Order] as changed.
- (f) No services for which an additional cost or fee will be charged by the [Subcontractor] shall be furnished without the prior written authorization of the [Company].

4.3 FAR 52.243-4, Changes – Fixed Price Above Simplified Acquisition Threshold (\$250,000) (June 2007), Modified

- (a) The [Company] may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the [Order], including changes-
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished property or services; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the [Company] that causes a change shall be treated as a change order under this clause; Provided, that the [Subcontractor] gives the [Company] written notice stating-
 - (1) The date, circumstances, and source of the order; and

(2) That the [Subcontractor] regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the [Company] shall be treated as a change under this clause or entitle the [Subcontractor] to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the [Subcontractor's] cost of, or the time required for, the performance of any part of the work under this [Order], whether or not changed by any such order, the [Company] shall make an equitable adjustment and modify the [Order] in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the [Subcontractor] gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the [Subcontractor] in attempting to comply with the defective specifications.

(e) The [Subcontractor] must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the [Company] a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. [Subcontractor shall submit an Information Review/Change Order ("IRCO Form"), FRM-2210]. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the [Subcontractor] for an equitable adjustment shall be allowed if asserted after final payment under this [Order].

**4.4 FAR 52.243-2, Changes – Cost-Reimbursement (Aug 1987)-Alternative III (Apr 1984),
Modified**

(a) The [Company] may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this [Order] in the plans and specifications or instructions incorporated in the [Order].

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this [Order], whether or not changed by the order, or otherwise affects any other terms and conditions of this [Order], the [Company] shall make an equitable adjustment in the-

- (1) Estimated cost, delivery, or completion schedule, or both;
- (2) Amount of any fixed fee; and
- (3) Other affected terms and shall modify the [Order] accordingly.

(c) The [Subcontractor] must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. [Subcontractor shall submit an Information Review/Change Order ("IRCO Form"), FRM-2210]. However, if the [Company] decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the [Order].

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the [Subcontractor] from proceeding with the [Order] as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause, the estimated cost of this [Order] and, if this [Order] is incrementally funded, the funds allotted for the performance of this [Order], shall not be increased or considered to be increased except by specific written modification of the [Order] indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the [Order]. Until this modification is made, the [Subcontractor] shall not be obligated to continue performance or incur costs beyond the point established in the [Price] clause(s) of this [Order].

4.5 FAR 52.243-3, Changes – Time and Material or Labor Hours (Sept 2000), Modified

(a) The [Company] may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this [Order] in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this [Order], whether or not changed by the order, or otherwise affects any other terms and conditions of this [Order], the [Company] will make an equitable adjustment in any one or more of the following and will modify the [Order] accordingly:

- (1) Ceiling price.
- (2) Hourly rates.
- (3) Delivery schedule.
- (4) Other affected terms.

(c) The [Subcontractor] shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. [Subcontractor shall submit an Information Review/Change Order (“IRCO Form”), FRM-2210]. However, if the [Company] decides that the facts justify it, [Company] may receive and act upon a proposal submitted before final payment of the [Order].

(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the [Subcontractor] from proceeding with the [Order] as changed.

4.6 FAR 52.243-5 Changes and Changes Conditions – Applies Under Simplified Acquisition Threshold (\$250,000), Modified

(a) The [Company] may, in writing, order changes in the drawings and specifications within the general scope of the [Order].

(b) The [Subcontractor] shall promptly notify the [Company], in writing, of subsurface or latent physical conditions differing materially from those indicated in this [Order] or unknown unusual physical conditions at the site before proceeding with the work. [Subcontractor shall submit an Information Review/Change Order (“IRCO Form”), FRM-2210].

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the [Company] shall make an equitable adjustment (see paragraph (d)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the [Subcontractor] before final payment under the [Order].

(d) The [Company] shall not make an equitable adjustment under paragraph (b) unless-

- (1) The [Subcontractor] has submitted and the [Company] has received the required written notice; or

(2) The [Company] waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

4.7 FAR 52.243-6 Change Order Accounting (Apr 1984), Modified

The [Company] may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The [Subcontractor], for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The [Subcontractor] shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the [Company] or the matter is conclusively disposed of in accordance with the Disputes clause.

4.8 FAR 52.243-7 Notification of Changes (Jan 2017), Modified

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the [Subcontractor] considers to constitute a change to this [Order]. Except for changes identified as such in writing and signed by the [Company], the [Subcontractor] shall notify the [Company] in writing promptly, within ten (10) calendar days from the date that the [Subcontractor] identifies any Government conduct (including actions, inactions, and written or oral communications) that the [Subcontractor] regards as a change to the [Order] terms and conditions. [Subcontractor shall submit an Information Review/Change Order (“IRCO Form”), FRM-2210]. On the basis of the most accurate information available to the [Subcontractor], the notice shall state-

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and [Subcontractor] official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of [Order] performance for which the [Subcontractor] may seek an equitable adjustment under this clause, including-

(i) What line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to [Order] price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The [Subcontractor's] estimate of the time by which the [Company] must respond to the [Subcontractor's] notice to minimize cost, delay, or disruption of performance.

(c) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the [Subcontractor] shall diligently continue performance of this [Order] to the maximum extent possible in accordance with its terms and conditions as construed by the [Subcontractor], unless the notice reports a direction of the [Company] or a communication from [the Company], in either of which events the [Subcontractor] shall continue performance; provided, however, that if the [Subcontractor] regards the

direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders, and similar actions of the [Company] shall be reduced to writing promptly and copies furnished to the [Subcontractor] and to the [Company]. The [Company] shall promptly countermand any action which exceeds the authority of the [Company].

(d) [Company] response. The [Company] shall promptly, within thirty (30) calendar days after receipt of notice, respond to the notice in writing. In responding, the [Company] shall either-

- (1) Confirm that the conduct of which the [Subcontractor] gave notice constitutes a change and when necessary direct the mode of further performance;
- (2) Countermand any communication regarded as a change;
- (3) Deny that the conduct of which the [Subcontractor] gave notice constitutes a change and when necessary direct the mode of further performance; or
- (4) In the event the [Subcontractor's] notice information is inadequate to make a decision under paragraphs (d)(1), (2), or (3) of this clause, advise the [Subcontractor] what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the [Company] will respond.

(e) Equitable adjustments. (1) If the [Company] confirms that [Company or] Government conduct effected a change as alleged by the [Subcontractor], and the conduct causes an increase or decrease in the [Subcontractor's] cost of, or the time required for, performance of any part of the work under this [Order], whether changed or not changed by such conduct, an equitable adjustment shall be made-

- (i) In the contract price or delivery schedule or both; and
- (ii) In such other provisions of the [Order] as may be affected.

(2) The [Order] shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the [Company or] Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the [Subcontractor] in attempting to comply with the defective drawings, designs or specifications before the [Subcontractor] identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the [Company] under this clause is included in the equitable adjustment, the [Company] shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the [Subcontractor's] failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

4.9 Material/Equipment Changes

4.9.1 No substitutions to Goods shall be made in this Order without the prior written consent of the Company.

4.9.2 The Company shall have the right by written direction to make changes to the specification and drawings for goods or services covered by this Order.

4.9.3 If Subcontractor believes that such change affects the price or delivery date for such goods or services, Subcontractor shall so notify Company in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Subcontractor shall suspend performance of the change unless thereafter released in writing by Company to perform said change, and Company

and Subcontractor shall mutually agree in writing upon an equitable adjustment in the Price and/or delivery date to reflect the effect of such change.

- 4.9.4 Subcontractor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Subcontractor receives direction to make such changes. Subcontractor shall not suspend performance of the unaffected portion of this Order while Company and Subcontractor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Company. If released in writing by the Company, Subcontractor shall comply with and perform such changes in accordance with the terms of this Order during the time Subcontractor and Company require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Order shall be binding upon Company nor will extra compensation be paid by Company unless the agreement or understanding is made in writing.

4.10 Subcontractor Change Request

- 4.10.1 Subcontractor may submit an IRCO Form if Subcontractor knows or should have known of a change, revision, addition, or deletion of the Work, Subcontractor shall give the Company written notice within five (5) calendar days after the happening of any event which Subcontractor believes may give rise to an adjustment in Price, schedule or any other terms or conditions.
- 4.10.2 Upon receipt of the IRCO Form, the Company shall review and submit it to the DOE for approval, if applicable. Any Price or Schedule adjustment granted to Company by DOE relating to the Work, is a condition precedent to any obligation by Company to sign a change/modification.
- 4.10.3 If DOE approves the Modification request, Company shall issue a written Modification to this Order which will be effective once signed by both Parties. If DOE does not approve the Modification Request, the Company, at its sole discretion, may sign a written modification.

4.11 Delays and Extension of Time

- 4.11.1 If the Subcontractor intends to file a claim for a time extension for a delay, it will, within forty-eight (48) hours of the occurrence, give written notice of the claim to the Company's SA stating the circumstances, the possible extension involved, and the reasons for the claim.
- 4.11.2 Within seven (7) calendar days after the cause of delay has been remedied, the Subcontractor will give written notice to the Company's SA of the actual time extension requested.
- 4.11.3 Within fifteen (15) calendar days after the Subcontractor submits to the Company's SA a specific written request for a time extension, the Company will make the final decision on the request for a time extension.
- 4.11.4 No time extension will be considered for weather conditions in the area in which the Work is being performed unless determined by the Company's STR to warrant such extension. Unusual weather conditions, if determined by the Company to be of a severity that would stop all progress of the Work, may be considered as cause for a time extension.
- 4.11.5 Delays in delivery of equipment or material purchased by the Subcontractor or its Lower-tier Subcontractors (including Company-selected equipment) or failure of the Subcontractor or its Lower-tier Subcontractors to perform will not be considered as a just cause for a delay unless the Company was responsible for causing the delay rather than the Subcontractor. The Subcontractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials, unless the Company caused impact beyond the Subcontractor's control.

5. GENERAL PROVISIONS

5.1 Survey Control Points and Layouts

Survey control points, as shown in the drawings, will be established by the Company. The Subcontractor shall complete the layout of all Work and shall be responsible for all requirements necessary for the Work execution in accordance with the locations, lines, and grades specified or shown on the drawings, subject to such modifications as the Company may require as Work progresses. If the Subcontractor or any of its lower-tier Subcontractors or any of their representatives or employees move or destroy or render inaccurate any survey control point, such control point shall be replaced by the Company at the Subcontractor's expense. No separate payment will be made for survey Work performed by the Subcontractor.

5.2 Drug Screening

Subcontractor employees performing on-site work under this Order are subject to an INL drug screen during the INL badging process.

6. PRIME CONTRACT FLOWDOWN CLAUSES

In addition to the Prime Contract Flowdown Clauses, the following Prime Contract clauses are hereby incorporated by reference into this Order and shall be in full force unless an exception applies, otherwise noted below, or otherwise specified in the clause.

6.1 FAR, DEAR AND DOE CONTRACT REQUIREMENTS

6.1.1 Applicable to all Construction Orders

Prime Contract Clause No.	FAR/DEAR Reference	Title
H.9(k)	N/A Full Text Below	INL Site Construction Jurisdiction Procedural Agreement (SJPA) and the INL Site Stabilization Agreement (SSA)
I.78	52.222-34	Project Labor Agreement (May 2010) (applies to construction and D&D work)
I.113	52.225-9 Full Text Below	Buy American – Construction Materials (Oct 2022)
I.114	52.225-11 Full Text Below	Buy American – Construction Materials Under Trade Agreements (DOE DEVIATION) (Feb 2008)
I.120	52.227-4	Patent Indemnity - Construction Contracts (Dec 2007)
I.139	52.232-27	Prompt Payment for Construction Contracts (Jan 2017)
I.149	52.236-5	Material and Workmanship (Apr 1984)
I.151	52.236-7	Permits and Responsibilities (Nov 1991) (applies to construction or D&D work)
I.155	52.236-11	Use and Possession Prior to Completion (Apr 1984)
I.211	952.223-78	Sustainable Acquisition Program (Oct 2010) – Alt I (Oct 2010)

6.1.2 Applicable to all Construction Orders over \$2,000

In addition to the above clauses, the following are hereby incorporated by reference into this Order and shall be in full force unless an exception or otherwise specified in the clause.

Prime	FAR/DEAR	Title
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Contract Clause No.	Reference	
I.60	52.222-6	Construction Wage Rate Requirements (Aug 2018)
I.61	52.222-7	Withholding of Funds (May 2014)
I.62	52.222-8	Payrolls and Basic Records (Aug 2018)
I.63	52.222-9	Apprentices and Trainees (Jul 2005)
I.64	52.222-10	Compliance with Copeland Act Requirements (Feb 1988)
I.65	52.222-11	Subcontracts (Labor Standards) (May 2014)
I.66	52.222-12	Contract Termination—Debarment (May 2014)
I.67	52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014)
I.68	52.222-14	Disputes Concerning Labor Standards (Feb 1988)
I.69	52.222-15	Certification of Eligibility (May 2014)
I.76	52.222-30	Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Method) (Aug 2018)
I.89	52.222-55	Minimum Wages Under Executive Order 13658 (Dec 2015)

6.1.3 Applicable to all Construction Orders – Firm Fixed Price (“FFP”)

In addition to the above clauses, the following are hereby incorporated by reference into this Order and shall be in full force unless an exception or otherwise specified in the clause.

Prime Contract Clause No.	FAR/DEAR Reference	Title
E.1.6	52-246-12	Inspection of Construction (Aug 1996)
F.1.2	52.242-14	Suspension of Work (Apr 1984)
I.77	52.222-31	Construction Wage Rate Requirements – Price Adjustment (Percentage Method) (Aug 2018)
I.130	52.232-5	Payments under Fixed-Price Construction Contracts (May 2014)
I.146	52.236-1	Performance of Work by the Contractor (Apr 1984)
I.147	52.236-2	Differing Site Conditions (Apr 1984)
I.148	52.236-3	Site Investigation and Conditions Affecting the Work (Apr 1984) (applies construction or D&D work)
I.150	52.236-6	Superintendence by the Contractor (Apr 1984) (applies construction or D&D work)
I.152	52.236-8	Other Contracts (Apr 1984) (applies to construction or D&D work)
I.153	52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984) (applies to construction or D&D work)
I.154	52.236-10	Operations and Storage Areas (Apr 1984) (applies to construction or D&D work)
I.156	52.236-12	Cleaning Up (Apr 1984) (applies to construction or D&D work)
I.157	52.236-13	Accident Prevention (Nov 1991) – Alt I (Nov 1991) (applies to construction or D&D work)
I.158	52.236-14	Availability and Use of Utility Services (Apr 1984) (applies to construction or D&D work)
I.159	52.236-15	Schedules for Construction Contracts (Apr 1984)
I.162	52.236-21	Specifications and Drawings for Construction (Feb 1997) - Alt I (Apr 1984) or Alt II (Apr 1984), as appropriate (applies to construction or D&D work)

I.173	52.243-4 Full Text Above	Changes (Jun 2007) (applies over \$250,000)
I.189	52.249-3	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) (Apr 2012) (applies to FFP - D&D work)
I.192	52.249-10	Default (Fixed-Price Construction) (Apr 1984) – Alt I (Apr 1984) (Alt I applies to construction or D&D work)

6.1.4 Applicable to all Construction Orders – Cost-Reimbursement (“CR”)

In addition to the above clauses in “Applicable to all Construction Orders” and “Applicable to all Construction Orders over \$2,000 (if applicable), the following are hereby incorporated by reference into this Order and shall be in full force unless an exception or otherwise specified in the clause.

Prime Contract Clause No.	FAR/DEAR Reference	Title
I.70	52.222-16	Approval of Wage Rates (May 2014)
I.160	52.236-18	Work Oversight in Cost-Reimbursement Construction Contracts (Apr 1984)
I.161	52.236-19	Organization and Direction of the Work (Apr 1984)
I.190	52.249-6	Termination (Cost-Reimbursement) (May 2004) – Alt I (Sep 1996)

7. FULL TEXT BELOW CLAUSES

7.1 Substitution of the Parties

For the purposes of the Order or Purchase Order, unless the context dictates otherwise, when it refers to the “Contracting Officer” (CO) or “Administrative Contracting Officer” (ACO) is to be interpreted as Company’s Subcontracts Administrator or Buyer and “Contractor” is to be interpreted as Subcontractor/Vendor.

7.2 (H.9(k)) INL Site Construction Jurisdiction Procedural Agreement (SJPA) and the INL Site Stabilization Agreement (SSA)

The Contractor and its subcontractors at all tiers performing work covered by the Wage Rate Requirements (Construction) (formerly known as the Davis-Bacon Act) shall become signatory to the INL SJPA and INL SSA. The Contractor employees and subcontractor employees performing such work shall receive pay and benefits consistent with the SSA unless otherwise negotiated between the Contractor and the Idaho Building and Construction Trades Council. Copies of the SSA and SJA are available at <https://sitelaborcoordinator.com/>. The SJPA and the SSA apply to construction performed under the contract consistent with the terms of the SJPA and the SSA.

7.3 (I.113) FAR 52.225-9 Buy American – Construction Materials (Oct 2022)

(a) Definitions. As used in this clause—

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

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

- (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

Cost of components means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

Domestic construction material means—

- (1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-
 - (i) An unmanufactured construction material mined or produced in the United States; or
 - (ii) A construction material manufactured in the United States, if-
 - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.
- Components of foreign origin of the same class or kind for which nonavailability

determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

“Fastener” means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

“Foreign construction material” means a construction material other than a domestic construction material.

“Foreign iron and steel” means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

“Steel” means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

(b) Domestic preference. (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows: None

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

(i) The cost of domestic construction material would be unreasonable.

(A) For domestic construction material that is not a critical item or does not contain critical components.

(1) The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that is manufactured in the United States and does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.

(B) For domestic construction material that is a critical item or contains critical components. (1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest foreign offer of construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.

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

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

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

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

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

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

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

Foreign and Domestic Construction Materials Price Comparison				
	Construction Material Description	Unit of Measure	Quantity	Price (dollars)*
Item1:				
	Foreign construction material	---	---	---
	Domestic construction material	---	---	---
Item2:				
	Foreign construction material	---	---	---
	Domestic construction material	---	---	---

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]
[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary].
[Include other applicable supporting information.]

7.4 (I.114) FAR 52.225-11 Buy American-Construction Materials Under Trade Agreements (DOE DEVIATION) (Feb 2008)

(a) Definitions. As used in this clause-

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

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

“Cost of components” means-

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

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

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic

of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

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

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

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

“Domestic construction material” means-

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

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

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that-

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

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

“Least developed country construction material” means a construction material that-

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

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

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

“WTO GPA country construction material” means a construction material that-

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

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

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

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

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

None

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

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

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

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

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

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

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

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

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

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

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

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

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

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

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

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

[Include other applicable supporting information.]

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

END OF SUPPLEMENTAL PROVISIONS - CONSTRUCTION