

**VIRGIN ISLANDS WATER AND POWER AUTHORITY
GENERAL CONTRACT TERMS FOR EQUIPMENT &
SUPPLIES/FEDERAL REQUIREMENTS**

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**VIRGIN ISLANDS WATER AND POWER AUTHORITY
GENERAL CONTRACT TERMS FOR EQUIPMENT & SUPPLIES**

1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

a. The term **"Work"** shall mean all equipment and/or supplies described in the Specifications, Request for Proposal, purchase orders or contract, and shall include any alternatives or exceptions to the Specifications incorporated in the bid and all work required by these General Contract Terms.

b. The term **"Specifications"** shall mean the detailed description of, and requirements for, equipment to be purchased or manufactured, including all plans and drawings, which are a part of the Specifications.

c. The term **"Authority"** shall mean the purchaser and owner of the Work, the Virgin Islands Water and Power Authority, or an authorized agent thereof.

d. The term **"Contractor"** shall mean the successful bidder who had been awarded the Contract for the performance of the Work, and shall include his/her legal personal representatives, successors, and assigns. Contractor shall also mean the "Seller", which is providing the Authority with Equipment or Supplies.

e. The term **"Contract"** shall mean the written agreement between the Authority and the Contractor.

f. The term **"Site"** shall mean the area within which the equipment is to be delivered and/or installed.

g. The term **"Contracting Officer"** shall mean the Executive Director of the Authority and any other officer or employee who is properly designated and shall include, except as otherwise provided, the authorized representative of the Contracting Officer acting within the limits of his authority. The Contracting Officer shall not mean the Project Coordinator.

2. GENERAL STATEMENT OF RESPONSIBILITY OF THE CONTRACTOR

a. The Contractor shall perform the Work in accordance with the terms of the Contract. This Work includes all necessary services, the furnishing of all labor, materials, equipment, tools, supervision, transportation and insurance, and documentation except as otherwise provided necessary to comply with the Work. The obligation of the Contractor shall be deemed to carry with it the obligation to incur all items of necessary expense to perform the Work.

b. The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of the Authority as to the work to be subcontracted; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Nothing contained herein shall create any contractual rights in any subcontractor against the Authority. Contractor shall cause all subcontracts applicable to any portion of the Work on the Authority's premises to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, naming both Authority and Contractor as an additional insured.

c. Any provisions of the Purchase Order or Contract which appear to give the Authority a right to direct the Contractor as to the means by which the Work is to be performed, or to exercise any control over the Work shall mean that the Contractor shall be obliged to follow the desires of the Authority only as to the end results and shall not in any way modify or relieve the Contractor of his/her complete and undivided responsibility for the means by which the Work is to be performed.

d. All supplies and/or equipment supplied or services performed by Contractor under the Contract shall strictly comply with the terms, conditions, and requirements of the contract and these terms and conditions

e. The Contractor shall deliver the supplies and/or equipment and perform any services to be furnished in accordance with the scheduled delivery dates and any schedule of performance stated herein. It is understood and agreed by the Contractor that time is of the essence of each and every

portion of the Work for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by the Authority of revised schedules from the Contractor during the work shall not be deemed a waiver of the contract completion date, unless agreed to by the Authority in writing.

3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

a. The Contractor shall furnish and maintain at the Site a competent resident supervisory representative who shall have the title of Project Manager: Provided that the Authority shall have the right to require the removal from the Site of any employee of the Contractor or any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interest of the Authority.

b. The Contract completion date shall be the date specified on the Bid form, or the Purchase Order or Contract, unless the Contractor has designated a later date that is acceptable to the Authority. The Work shall be deemed to be completed upon acceptance by the Contracting Officer following written notification from the Contractor that the Work is ready for final inspection and acceptance.

4. SITE WORK

When any aspect of this Contract involves attendance at or the performance of Services at the Authority's plant site or the site of any of the Authority's customer, the following additional provisions shall apply: (a) Contractor and its agent, officers, employees, and subcontractors shall comply with all site rules and all safety and security regulations imposed by the Authority (or its customer, if at such customer's site); (b) Contractor shall take all necessary precautions to prevent the occurrence of any injury to person or property during the performance of the services; (c) Contractor shall maintain the following insurance during the performance of the Services, and shall provide the Authority with satisfactory proof of such insurance coverage: (i) general liability insurance covering all sums for which Contractor shall become legally liable to pay as damages arising out of property damage, personal injury, bodily injury, sickness or death; (ii) automobile liability insurance covering all sums for which the Contractor shall become legally liable to pay as damages arising out of bodily injury, sickness or death or property damage, arising out of the operation of owned or non-owned automobiles; (iii) Worker's Compensation

Insurance to conform with the laws and limits in accordance with statutory requirements of the applicable jurisdiction, and employer's liability insurance covering all sums for which Contractor shall become legally liable to pay as damages arising out of bodily injury to or occupational disease of the employees of Contractor or employees of any subcontractor of Contractor; (iv) if the Services required any professional engineering, design, architectural, or survey services, professional liability insurance covering all sums for which Contractor shall become liable to pay as damages arising out of property damage or personal injury, bodily injury, sickness, or death (such policy shall be maintained for three years beyond final completion of the Services); (d) all required insurance coverage specified above shall; (i) except as otherwise expressly provided, provide for combined single limit of liability for each occurrence of not less than \$1,000,000.00; (ii) include a waiver of subrogation clause in favor of the Authority; (iii) name the Authority as an additional insured with respect to the operations of Contractor; and (iv) provide that at least 30 days' written notice shall be given to the Authority prior to any material change or cancellation of any such policy or policies.

5. EFFECTIVE DATE

The Contract shall become effective upon the date of signature by the authorized representative of the Contractor or the Authority, whichever is later, which later date shall be the effective date of the Contract.

6. CHANGES

The Authority may at any time, by written notice to Contractor, change this order or the Contract as to (1) designs or drawings of or specifications for the equipment, (2) time or place of delivery or performance, (3) method of packing or shipment, or (4) quantity of the goods or extent of the services. If this causes a change in Contractor's cost or time of performance, then an equitable adjustment shall be made in the price or time for delivery or performance, or both, if Contractor give the Authority a written request for an adjustment within 20 days after the Authority notifies Contractor of the change. All changes must be documented and approved in writing by the Authority project manager before authorizing any changes. Contractor's actions in proceeding with the changes to the Scope of Work without first securing written authorization from the Contracting Officer shall result in a legal presumption

that shall be prima facie that Contractor is not entitled to additional compensation. Compensation, for changes to the Scope of Work, or extensions of the completion date because of changes, or other modifications of the Contract due to change shall be set forth in change orders or contract addendums. Provided however, that the disagreement between the parties on adjustments for changes shall not excuse the Contractor from proceeding with the completion of the Work as changed.

Termination under this paragraph shall terminate or impact only the Contractor's obligation and right regarding the delivery of goods or in providing services under any provision of the Contract, including this paragraph, and shall not terminate or impair Contractor's other obligations, or any of the Authority's rights, under the Contract.

7. A. TERMINATION FOR DEFAULT

- (i) If the Contractor shall commit a material breach or default of any of its covenants or obligations under the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Authority, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Authority may terminate by fifteen (15) days written notice the Contractor's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may take over the Work and prosecute same to completion by contract or otherwise and the Contractor and his sureties may be liable to the Authority for any excess cost occasioned the Authority thereby, and for damages inclusive of any excess cost occasioned by the Authority until such reasonable time as may be required for final completion of the Work. If the Contractor's right to proceed is so terminated, the Contractor shall provide so that the Authority can utilize in the completion of the Work such materials, data, reports, calculations, and information as has been compiled by Contractor in the performance of the Work which the Authority has previously paid for.
- (ii) If the Authority shall commit a material breach or default of any of its covenants or obligations under

the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Contractor, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Contractor may, by fifteen (15) days written notice to the Authority, terminate the Authority's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may be liable for damages.

- (iii) Upon receipt of a termination notice, Contractor shall
- (a) promptly discontinue all Work to the extent directed; and
 - (b) secure the Work site to avoid damage or injury to persons or property.

B. TERMINATION FOR CONVENIENCE

- (a) The Authority may, at any time, terminate the Contract for its convenience and without cause.
- (b) Upon receipt of written notice from the Authority of such termination for the Authority's convenience, the Contractor shall:
 - i. cease operations as directed by the Authority in the notice;
 - ii. take actions necessary, or that the Authority may direct for the protection and preservation of the Work;
 - iii. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.
- (c) In the case of such termination for Authority's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred (as outlined in b(iii)) by reason of such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Authority, become the property of the Authority.

8. CONTRACT PRICE

Unless otherwise expressly and specifically provided herein, the prices stated in the purchase order, contract, contract addendum or change orders are firm and are not subject to increase. Unless the Authority agrees otherwise in writing, the Authority shall not be required to pay any sales, use or other taxes arising because of the Authority's purchase from the Contractor. The Authority shall not be required to pay any late charge, interest, finance charge, or similar charge, unless the parties agree otherwise in writing. The Authority's payment of the purchase price does not constitute its acceptance of the goods or services.

9. TERMS OF PAYMENT

1. Payments will be in accordance with the following:

a. Unless otherwise specified in the Purchase Order or Contract, payment shall be made by the Authority to the Contractor within thirty (30) days after receipt and processing of a properly executed and duly certified invoice thereof with required supporting documentation.

b. Should the Purchase Order or Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery or other performance.

c. The acceptance by the Contractor of final payment, except for any express written reservation of rights, shall be and shall operate as a release of the Authority from all claims of and all liability to the Contractor for all things done or furnished in connection with the Purchase Order or Contract, and for every act and neglect of the Authority and others for whom the Authority is or may be responsible relating to or arising out of the Purchase Order or Contract. However, no payment, final or otherwise, shall operate to release the Contractor from any obligations under the Purchase Order or Contract.

10. EXCUSABLE DELAY AND DAMAGES

(a) Contractor shall be excused for any delay in performance hereunder arising from a cause beyond its control which it could not by the exercise of due diligence have

avoided, including an act of any governmental authority, an act of God, extraordinary weather conditions, flood, an accident such as a fire or explosion not due to the negligence of the Contractor, a strike not caused or prolonged by an unfair labor practice of the Seller, public disorder or riot, a failure of public transportation facilities, and inability of the Authority to provide access due to plant malfunctions. Delay in the Contractor's receipt of subcontracted supplies or services, even for reasons beyond the control of the subcontractors, shall not be excusable delay hereunder if the supplies or services are available to the Contractor from another source. The Contractor shall give written notice and full particulars of the cause of delay relied upon within 48 hours after the Contractor knows, or should know, of the occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. The Authority shall not be liable for any additional costs incurred as a result of such delay.

(b.) If the Contractor should fail to meet the Contract completion date, for any cause other than excusable causes as defined in paragraph a, above, the Contractor and his sureties shall be liable to the Authority, and shall be assessed liquidated damages and not as a penalty subject to a maximum of liquidated damages not greater than of the total consideration, which amount the Authority may deduct from payments thereafter due the Contractor.

(c.) The Authority reserves the right under this clause to forego its claim for liquidated damages for delays and to sue for actual damages incurred as a result of such delays.

11. DELIVERY AND FORCE MAJEURE

Unless the Authority agrees otherwise in writing, Contractor shall deliver the goods DDP ("delivered duty paid") and F.O.B. (Uniform Commercial Code term) to the location identified by the Authority, except that the Authority may, at its option, take delivery of all or any part of the goods at Contractor's facility; provided however that it shall be the responsibility of the Contractor to ensure delivery of the equipment to the designated location and further provided that the Contractor shall deliver the equipment or supplies to a reputable shipping agency and insure the equipment or supplies for 120% of the value of the Contract or Purchase Order. Time of delivery or performance is of the essence, and the Authority's stated delivery or performance date and the date for performance of any other obligation of

Contractor shall not be extended for any reason, including delays in manufacture or shipment that Contractor cannot control, except as provided in the following sentence. Contractor shall not be liable for any nonperformance or delay in performance caused solely by a strike, lockout, riot, war, insurrection, act of God or public enemy, if Contractor immediately notifies the Authority of the event and gives the Authority a detailed description of the non-performance and/ or delay in completion of the Work that will be caused by it.

The Authority shall then have the option to terminate the Contract, without liability to Contractor, by giving written notice of termination to Contractor. Except as provided in this paragraph, no event or circumstance shall limit Contractor's liability for any non-performance or delay, even if the event or circumstance is beyond Contractor's control.

12. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES

a. The Contractor shall comply strictly with all applicable federal, state, territorial and local laws, codes, orders and regulations in connection with the performance of the scope of work. The Contractor shall provide the Authority, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article.

b. Contractor acknowledges that it is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer and usage of the Supplies or Equipment provided under the Contract, including any export license requirements. Contractor agrees to indemnify and hold the Authority harmless from any and all costs, liabilities, penalties, sanctions and fines related to non-compliance with applicable export laws and regulations.

13. INSURANCE

The insurance requirements are as set forth in the attached Exhibit A.

14. INSPECTION AND TESTS

A. The Authority shall have the right to inspect any and all records of the Contractor or its

subcontractors whenever the Authority believes that this is necessary to assure it that equipment to be furnished hereunder is being produced and will be produced in full compliance with the requirement of the Contract or Purchase Order and on schedule. In addition, the Contractor shall provide, and shall cause its subcontractors to provide, access to factories and shops at all reasonable times for the Authority to inspect work in progress. The Authority shall have the right to be present and witness tests relating to the equipment purchased hereunder. The Authority, in addition, shall have the right to require additional tests to be performed at all reasonable times and places. Any special tests ordered in writing by the Authority will be paid for by the Authority, provided that if such tests reveal nonconformity with the Purchase Order requirements, the cost of such tests shall be borne by the Contractor. No inspection, failure to inspect or waiver of inspection by the Authority or anyone acting on its behalf shall relieve the Contractor of its obligation to furnish equipment and services fully in accordance with the requirements of the Contract or Purchase Order. All equipment is received subject to inspection and approval, notwithstanding prior payment, it being understood that payment does not constitute acceptance. All rejected equipment will be held at the Contractor's expense and risk, pending the Contractor's disposition instructions.

- B. The Authority shall have the right to inspect the Goods, if any, at Contractor's plant or other place of manufacture. Notwithstanding any such inspection, all Goods are subject to the Authority's final inspection and acceptance on deliver. If rejected, the Goods will be held for disposal at Contractor's risk and expense. No inspection, acceptance of any part or all the Goods, or payment shall relieve Contractor from full responsibility for furnishing Goods conforming to the requirements of this Contract, nor prejudice any claim, right, or privilege the Authority may have for defective or unsatisfactory Goods, delays in delivery, or other non-compliance with this Contract by Contractor.

15. RIGHT TO AUDIT

1. The Authority reserves the right to review original estimate files, change order estimate

files, detailed worksheets; subcontract and supplier proposals for both successful and unsuccessful bidders; all project-related correspondence; subcontractor and supplier change order files (including detailed documentation covering negotiated settlements); back-charge logs and supporting documentation; any records detailing cash, trade or volume discounts earned and insurance proceeds, rebates, or dividends received.

2. The contractor shall provide the Authority with copies of records in computer-readable format as well as a hard copy.
3. The Authority reserves the right to audit any supporting evidence necessary to substantiate charges related to the contract or purchase order (both direct and indirect costs, including overhead allocation as may apply to costs associated with the contract or purchase order).
4. The Authority reserves the right to audit any records necessary to evaluate and verify (a) contractor compliance with contract requirements, (b) compliance with the Authority's business ethics policies, and (c) compliance with provisions for pricing change orders, payment, or claims submitted by the contractor or any of payees.
5. The contractor's records shall be subject to audit throughout the term of the contract and for a period of five years after final payment or longer, if required by law.
6. The contractor shall include the Authority's right to audit provisions in contracts of all subcontractors, insurance agents, material suppliers, or any other business entity providing goods and services
7. The Contractor shall permit the Authority to interview any of the contractor's current and former employees during the audit.
8. The Contractor shall provide adequate work space and access to photocopy machines.
9. The Authority shall recoup the cost of the audit if the audit detects over charges greater than 0.5 % of the

total contract billings.

16. SUBCONTRACTING

The Contractor shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of the Authority as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Nothing contained herein shall create any contractual rights in any subcontractor against the Authority. Contractor shall cause all subcontracts applicable to any work on the Authority's premises to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Contractor, naming both the Authority and Contractor as additional insureds. Subcontracts shall provide for the Contractor the same rights against the subcontractor as the Authority has hereunder against the Contractor and shall expressly state that such provisions shall also be for the benefit of the Authority.

17. ASSIGNMENT

The Contractor shall not assign the Purchase Order or Contract or any of its rights thereunder the Purchase Order or Contract without the prior written consent of the Authority, and any assignment made without such consent shall be void.

18. CONFIDENTIALITY

All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by the Authority or originally furnished or prepared by the Contractor or its subcontractors in connection with the Purchase Order or Contract shall, except to the extent indicated in writing by the Authority, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Purchase Order or Contract, and be delivered or returned to the Authority upon completion of such performance. The Contractor shall not use the Authority's name in connection with any advertisement or any announcement regarding its work under the Purchase Order or Contract or for any other purpose without obtaining the Authority's prior written permission. The Contractor acknowledges that its

violation of the provisions of this article may result in irreparable harm to the Authority, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages.

Accordingly, the Contractor agrees that the Authority will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

19. INDEMNITY

(a) Contractor shall indemnify and hold the Authority harmless (and defend the Authority, upon its request) as to any claims, liabilities, losses, damages and expenses (including, without limitation, attorneys' fees and other legal expenses) brought against the Authority or incurred by the Authority because of: (1) any breach by Contractor of any of its representations or warranties to, or agreements with, the Authority; (2) any claim that any of the supplies, equipment or services provided by the Contractor infringes upon any patent, trademark, copyright or other intellectual property right, anywhere in the world; or (3) any death, injury, cause of action or damage to any person or property alleged to have been caused by the Contractor in performance of the Work.

(b) If the Authority is sued for acts arising out of those set out in (a) above, the Contractor shall promptly accept the tender of defense made by the Authority, as a condition of this contract.

(c) It is further agreed to by the parties that the Authority shall have the sole authority to direct the defense of and settle any indemnified claim. Further that the Authority shall not contribute to any settlement so long as the demand is within the insurance policy limits required by the contract or purchase order.

20. WARRANTIES

The Contractor warrants that the equipment furnished hereunder will be new and free from defects in title, design, material, fabrication and workmanship, will conform strictly to applicable specifications, drawings, standards and codes, regulatory requirements, and other descriptions incorporated herein, will be suitable for its intended purpose and of merchantable quality, and will comply with and be usable in compliance with its intended purpose and with

all applicable laws and regulations. The Contractor further warrants that any services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practices. Should any failure to meet any of the warranties stated herein appear within twelve (12) months after commencement of commercial operation of the equipment or eighteen (18) months after acceptance of the equipment by the Authority, whichever first occurs, the Contractor shall upon notice by the Authority repair or replace the equipment and perform the services not conforming to the foregoing warranties, promptly and without expense to the Authority. In the event of a failure of the Contractor to promptly remedy any breach of warranty as aforesaid, the Authority may correct the deficiencies and charge the Contractor for the cost thereof, which costs the Contractor shall pay. The aforesaid warranties shall survive acceptance of and payment for equipment and services furnished hereunder. After any equipment or services have been repaired, replaced or redone pursuant to the foregoing warranties, they shall be subject anew to the original warranties.

21. FALSE CLAIMS

Contractor warrants that it shall not, with respect to any Contract or Purchase Order, make or present any claim upon or against the Authority and/or the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

22. DELIVERY, TITLE and RISK OF LOSS

Delivery of the Goods, if any, to the Authority shall take place at The Authority's plant site or such other shipping destination specified on the face of this Contract. Notwithstanding any shipping arrangement specified in this Contract, Contractor shall have the risk of loss for all Goods shipped under this Contract until receipt of delivery and acceptance pass to the Authority. Partial shipments are not permitted unless otherwise agreed to in writing by the Authority. For the purpose of securing Contractor's performance of its obligations under this Contract, Contractor hereby grants to the Authority a security interest in and to the completed or partially completed Goods covered by any progress payments by the Authority.

23. GOVERNING LAW

The laws of the United States Virgin Islands shall govern the interpretation and construction to the extent applicable. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the contract.

24. TERMINATION FOR CONVENIENCE:

- (c) The Authority may, at any time, terminate the Contract for its convenience and without cause.
- (d) Upon receipt of written notice from the Authority of such termination for the Authority's convenience, the Contractor shall:
 - i. cease operations as directed by the Authority in the notice;
 - iv. take actions necessary, or that the Authority may direct for the protection and preservation of the Work;
 - v. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.

(c) In the case of such termination for Authority's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred (as outlined in b(iii)) by reason of such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Authority, become the property of the Authority.

25. FEMA/HUD GENERAL PROVISIONS

The terms and conditions of HUD General Provisions, a copy of which is attached hereto and made a part of these General Contract Terms as Exhibit B are applicable to this Agreement.

26. INDEMNIFICATION FOR INJURY AND DAMAGE CLAIMS

(a) Contractor shall indemnify, defend, and hold the Authority and its servants, employees and agents harmless against any and all claims, damages, injuries, suits, actions, causes of action for damages or alleged damages, orders, judgments, expenses, costs, and attorney's fees, arising after

the commencement of the contract, brought for damages or alleged damages arising out of any injury or loss of life, claim or demand of any person or property in any way connected with or arising out of the performance of the work. It is the intention and express agreement of the parties that the Authority shall not be liable for any bodily or personal injuries, loss of life or damage, to Contractor, its servants, employees, agents, invitees, or to Contractor's subcontractors, subcontractor employees, agents, or invitees, or to any other person, or property of Contractor, irrespective of how the same may be caused, whether from action of the elements, or acts of negligence of the Authority, its employees or agents, the Contractor, its-servants, employees, agents or invitees, or the Contractor's subcontractors, subcontractor employees, agents and invitees. It is the intention of the parties that this paragraph shifts the cost of all insurance, whether benefitting Contractor or the Authority, or both, to the Contractor.

(b) If the Authority is sued for acts arising out of those set out in (a) above, the Contractor shall promptly accept the tender of defense made by the Authority, as a condition of this contract.

(c) It is further the intention of the parties, that Contractor, its servants, employees, agents, and its carrier will not look to the Authority to contribute to any settlement so long as the demand is within Contractor's insurance policy limits.

27. LIENS

1. The Contractor shall indemnify and save the Authority harmless from all laborers, material men's, and mechanics' liens on the Work or the Site, or the Authority's interest therein, arising out of the services, labor, equipment and materials furnished by the Contractor (or any of its subcontractors) under the Contract, and shall keep the Work and the Site free and clear of all liens and encumbrances arising from the performances of the Work.

2. The final payment for the Work, as provided for in Clause 15 shall not become due until the Contractor shall have supplied to the Authority a complete release of all laborers', material men's and mechanics' liens arising out of the services, labor and materials furnished by the Contractor (or any of his subcontractors) under the Contract. An affidavit that, so far as the Contractor has knowledge or information, the releases

include all the labor and materials for which a lien could be filed shall also be supplied: Provided that the Contractor may, if any subcontractor refuses to furnish a release, furnish a bond satisfactory to the Authority to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Authority all monies that the Authority may have to pay in discharging such lien, including all costs and expenses, including attorney's fees, said refund to be made within thirty (30) days after the submission by the Authority to the Contractor of an invoice for such monies.

28. CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

29. GRATUITIES

1. The Authority may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the Authority, after notice and hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative thereof, to any officer or employee of the Authority with a view toward securing the Contract or securing favorable treatment with respect to the performance of such Contract. The Authority's findings hereunder shall be conclusive.

2. In the event this Contract is terminated pursuant to paragraph a, the Authority shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (ii) as a penalty, in addition to any other damages to which the Authority is entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall not be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

3. The rights and remedies of the Authority under this under provision shall not be exclusive and are in addition to any other remedies provided by law or under this Contract.

30. RIGHT TO AUDIT

1. The Authority reserves the right to review original estimate files, change order estimate files, detailed worksheets; subcontract and supplier proposals for both successful and unsuccessful bidders; all project-related correspondence; subcontractor and supplier change order files (including detailed documentation covering negotiated settlements); back-charge logs and supporting documentation; any records detailing cash, trade or volume discounts earned and insurance proceeds, rebates, or dividends received.
2. The contractor shall provide the Authority with copies of records in computer-readable format as well as a hard copy.
3. The Authority reserves the right to audit any supporting evidence necessary to substantiate charges related to the contract or purchase order (both direct and indirect costs, including overhead allocation as may apply to costs associated with the contract or purchase order).
4. The Authority reserves the right to audit any records necessary to evaluate and verify (a) contractor compliance with contract requirements, (b) compliance with the Authority's business ethics policies, and (c) compliance with provisions for pricing change orders, payment, or claims submitted by the contractor or any of payees.
5. The contractor's records shall be subject to audit throughout the term of the contract and for a period of five years after final payment or longer, if required by law.
6. The contractor shall include the Authority's right to audit provisions in contracts of all subcontractors, insurance agents, material suppliers, or any other business entity providing goods and services
7. The Contractor shall permit the Authority to interview any of the contractor's current and former employees

during the audit.

8. The Contractor shall provide adequate work space and access to photocopy machines.
9. The Authority shall recoup the cost of the audit if the audit detects over charges greater than 0.5 % of the total contract billings.

31. NOTICE

Any notice which shall be required to be given under the Contract shall be in writing in duplicate, mailed in a postage prepaid wrapper, registered and addressed, in the case of the Contractor to his home office, and in the case of the Authority to the Contracting Officer.

32. ENFORCEMENT

The failure of either party to enforce at any time any of the provisions of the Contract or any rights in respect thereto, or to exercise any option herein provided, shall not be construed to constitute a waiver of such provision, right or option or in any way effect the validity of the contract or the obligation and responsibilities of the parties thereto. The exercise by either party of any of its right or options herein shall not preclude or prejudice either party from exercising any other right it may have.

33. GOVERNING LAW

The laws of the Virgin Islands shall govern the interpretation and construction of this Agreement to the extent applicable. The Parties agree that all causes of action against either Party shall be brought in the court of competent jurisdiction in the Virgin Islands. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

34. EFFECTIVE DATE

The Contract shall become effective retroactive to the date of signature by the authorized representative of the Contractor or the Authority, whichever is later, which later date shall be the effective date of the Contract.

35. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

36. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that if this Contract is funded, in whole or in part, by federal funds, Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

37. EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. 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, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; laying 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 considerations for employment without regard to race, color, religion, sex, or national origin.

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 advising the said labor union or workers' representatives of the contractor's commitments under this section, 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 Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. 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 canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or vendor. The contractor

will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter onto such litigation to protect the interests of the United States."

38. COMPLIANCE WITH THE COPELAND" ANTI-KICKBACK" ACT

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145. and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA 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 of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

39. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 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 (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 request to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this 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 (1) of this section.
3. Withholding for unpaid wages and liquidated damages. FEMA or such other authorized Federal 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 the 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 (2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.S. 7401 et. seq.
2. The contractor agrees to report each violation to the local Department of Planning & Natural Resources ("DPNR") and the Authority and understands and agrees that DPNR and the Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150, 000 financed in whole or in part with Federal assistance provided by FEMA.

41. FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Department of Planning and Natural Resources ("DPNR") and the Authority and understands and agrees that DPNR and the Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency regional office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

42. SUSPENSION AND DEBARMENT

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180,

subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by Contractor. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of the Virgin Islands, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions."

43. BYRD ANTI- LOBBYING AMENDMENT, 31 U.S.C. § 1352

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress or an employee or a member of congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

44. ACCESS TO RECORDS

1. The contractor agrees to provide the Government of the Virgin Islands, the Authority, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

45. DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the Authority, or DHS seals(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA or Authority preapproval.

46. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, Executive Orders, FEMA policies, procedures, and directives.

47. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

48. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's action pertaining to this contract.

49. PROCUREMENT OF RECOVERED MATERIALS

- (1) In the performance of this contract, the Contractor shall make the maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-
 - (i) Competitively within a timeframe providing for

- compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guidelines-cpg-program>."

50. ENTIRE AGREEMENT: MODIFICATION

The Contract constitutes the entire agreement between the parties. The Contract may not be amended or modified except by an instrument in writing signed by duly authorized representatives of the parties.