

**VIRGIN ISLANDS WATER AND POWER AUTHORITY
AMI PROJECT GENERAL CONTRACT TERMS/FEDERAL REQUIREMENTS**

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AMI PROJECT GENERAL CONTRACT TERMS

1. DEFINITIONS

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

- a. The term **“Work”** or **“Scope of Work”** shall mean all equipment, supplies and work required to design, construct, install, and/or deliver the infrastructure described in the Specifications, Request for Proposals, Invitation or Bid or Contract and all requirements of these AMI Project General Contract Terms (including alterations made before the Contract was signed and changes provided for by Clause 9 hereof).
- The term **“Services Work”** is a subset of the “Work” or “Scope of Work” and refers exclusively to labor, installation, maintenance, instruction, and any other activities required to design and implement the infrastructure described in the Specifications, Request for Proposal(s), Invitation or Bid of Contract and all requirements of these AMI Project General Contract Terms (including alterations made before the Contract was signed and changed provided for by Clause 9 hereof).
- b. The term **“Specifications”** shall mean the detailed description of, and requirements for, work to be performed, 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.
- e. The term **“Contract”** shall mean the written agreement between the Authority and the Contractor.
- f. The term **“Site”** shall any location, whether on public property, private property, or property owned or controlled by the Authority, where the Work is required to be performed. This includes all areas where the Authority’s equipment, infrastructure, facilities, or utilities are situated or must be accessed for the purposes of performing the Work, including but not limited to rights-of-way, customer properties, Authority properties, and public spaces.
- 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 her 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, site preparation, construction and/or installation and testing, and the furnishing of all labor, materials, equipment, tools, supervision, transportation and insurance, except as otherwise provided. 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.

The Contractor shall be an independent contractor and shall have complete and undivided responsibility for complying with the Contract, including sole discretion for the means by which the Work is to be performed. Without any qualification of such undivided responsibility, the Contractor shall have the right to enter into such subcontracts, purchase orders, and other commitments with third parties for the performance of any part of the Work, as may in his opinion be advantageous or necessary for the expeditious or economical prosecution of the Work. The Contractor shall not assign the Contract or any of his/her duties or responsibilities thereunder.

b. Any provisions of the Contract which appear to give the Authority the 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.

c. All supplies and/or equipment supplied, or services performed by Contractor under the Contract shall strictly comply with the terms, conditions, and requirements, and shall be done in a professional and workmanlike manner in accordance with the Contract.

d. 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.

e. Contractor shall be responsible for the professional quality, technical accuracy and timely completion of its services furnished under the Contract. The contractor shall, without additional compensation, and at its own cost and expense, correct or revise any errors, omissions or other deficiencies in the services.

f. Contractor understands that this project is funded by FEMA and HUD CDBG-DR. Consequently, Contractor will endeavor to follow all requirements for federally funded projects.

3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

a. The Contractor agrees to commence the Work promptly after receipt of a written Notice to Proceed from the Authority and to complete it no later than the Contract completion date.

b. 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 of any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interests of the Authority.

c. The Contractor shall furnish and maintain during the performance of the Work, 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 and/or of any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interest of the Authority.

d. The Contract completion date shall be the date specified in the Contract, unless the parties have agreed to an acceptable later date, except that the completion date may be extended under Clauses 9 or 12 hereof. The Work shall be deemed to be completed upon acceptance by the Contracting Officer following written notification from the Contractor that the Work has been performed in accordance with the Contract scope.

4. LICENSES, PERMITS AND RESPONSIBILITY FOR WORK, ETC.

The contractor shall comply with all federal and local laws, codes or regulations which apply to the performance of the Work. The contractor shall secure at its own expense all necessary licenses, certificates, and permits necessary to perform the Scope of Work.

5. SITE

- a. The Site will be furnished to the Contractor by the Authority in its existing condition, except as otherwise provided herein. The Site includes any location where the Work is required to be performed, whether on public property, private property, or property owned or controlled by the Authority. This includes, but not limited to, areas where the Authority's infrastructure exists, such as meter bases at or near private, public, or commercial properties, transformers, substations, easements, rights-of-way necessary to complete the Work.
- b. The Contractor represents that it has examined the Site, including any public or private property where the Work may be performed, and has taken all other reasonable steps necessary to fully understand the physical conditions at the Site and difficulties that may be encountered in performing the Work due to such conditions. The Contractor acknowledges that the obligation to complete the Work includes assuming all risks associated with physical conditions at the Site as they exist on the date of its bid. Notwithstanding the foregoing, the Authority is responsible for informing the Contractor of any existing underground utilities that are not visible during inspection or shown on the available site drawings; however, the Authority does not guarantee the exact location or elevation of such utilities.
- c. Information provided Specifications or any drawings regarding the Site is believed to be reasonably correct, but the Authority does not warrant the completeness or accuracy of such information. It is the responsibility of the Contractor to verify all such information before proceeding with the Work.

6. RESPECTIVE RESPONSIBILITIES OF THE PARTIES AT THE SITE

- a. The Authority shall establish general reference points at the Site that will enable the Contractor to perform the Work with minimum interruption or delay. The Authority shall protect and preserve the established reference points and shall not alter their location without proper notice to the Contractor.
- b. The Contractor shall perform the Work at the Site in such manner that avoids damage to existing facilities or interruption with their continued operation. Likewise, The Authority shall ensure that its operation of any existing facilities do not unduly interfere with the Contractor's ability to perform the Work.
- c. The Contractor shall be responsible for locating all existing underground utilities, such as cables, conduit, water pipes, sanitary lines, etc., using hand excavation the Contractor must take care to protect these utilities from damage. Any Damage caused shall be immediately repaired by the Contractor at its own expense. Connections to existing equipment or infrastructure must be made only with the advance approval of the Contracting Officer.
- d. The Contractor shall be responsible for ensuring proper safety and protection measures for the health, life, and safety of personnel, the public, the Work, and all materials, machinery, equipment, tools, and supplies used in the performance of the Work. Additionally, the Contractor is responsible for protecting the property of others from damage during the execution of the Work.
- e. The Authority shall provide access to the Site at all times during the term of the Contract: Provided, however, that the Contractor shall be responsible for improving and or maintaining any access roads used in the performance of the Work. The Authority assumes no responsibility for the condition or maintenance of these roads.
- f. The Contractor acknowledges that the Work may require access to private and interaction with members of the public. The Contractor and all personnel involved in the Work must conduct themselves professionally at all times, maintaining proper decorum and refraining from any offensive, disruptive, or inappropriate behavior. Any interaction with property owners or members of the public must be respectful and minimize disruption. Failure to adhere to these standards may result in the removal of offending personnel from the Site and further corrective actions by the Authority.
- g. The Contractor shall take all reasonable precautions to avoid causing damage to any customer premises, including landscaping, structures, and other personal property. Should damage occur, the Contractor shall be responsible for promptly repairing or compensating for the damage to the satisfaction of the customer and the Authority

7. ACCESS TO WORK IN PROGRESS

- a. The work shall be performed at the Site or in the Contractor's office or at a location mutually satisfactory to both parties and such location shall not be changed without approval of the Project Coordinator
- b. Subject to federal security laws and regulations, the Authority and its representatives shall at all times have reasonable access to the facilities of the Contractor, his/her engineers, the manufacturing division and subcontractors, to ascertain the progress of the Work.
- c. The Authority and its representatives shall also have reasonable access at all times to work in progress at the Site, and the Contractor shall provide sufficient, safe and proper facilities for such access and inspection, it being understood that such access shall not unreasonably interfere with the orderly completion of the Work by the Contractor
- d. The Project Coordinator shall have access during the normal working hours where the Work is performed and to all of the data, calculations, models, test results, specimens and documents and any other matter related to the performance of the work scope of the contacts.

8. PROGRESS REPORTS AND WORKING SCHEDULES

The Contractor shall prepare weekly progress reports of the Work, or such reports as required by the Project Coordinator. When requested by the Authority, the Contractor shall furnish the underlying documents used in the preparation of any progress report including, if applicable, estimated material and equipment, procurement, manufacturing, shipping, installation and construction schedules: Provided that if, in the judgment of the Contractor, furnishing copies would involve inordinate expense the Authority may be provided access to such document instead.

9. CHANGES

The Contracting Officer may, at any time and without notice to the sureties, issue a written request for changes in the Work, provided that the changes are within the general scope of the Contract. Upon receiving such a request, the Contractor shall, within the time specified in the request but no later than thirty (30) days after receipt, submit an estimate of the effect of the requested changes, if any, upon the Contract price, the completion date, or other terms and conditions of the Contract.

No changes in the scope of Work shall be implemented, nor shall any related work proceed, until the Contracting Officer issues a written order. IF the Contractor proceeds with the changes to the scope of Work without first obtaining written authorization from the Contracting Officer, it shall be presumed, as a matter of law and that shall be prima facie evidence, that the Contractor is not entitled to additional compensation.

Compensation for changes to the scope of work, or extensions of the completion date due to changes, or other modifications of the Contract as a result of changes shall be set forth in formal Contract change orders. Provided however, that any disagreement between the parties regarding adjustments for changes shall not excuse the Contractor from continuing with the work as modified

10. SUSPENSION OR INTERRUPTION OF WORK

- a. The Contracting Officer may, in writing, order the Contractor to suspend all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Authority.
- b. If without the fault or negligence of the Contractor the performance of all or any part of the Work is suspended or interrupted hereunder for any unreasonable period of time, the Contract price shall be adjusted for any increase in the cost of performing the Work excluding profit necessarily caused by such unreasonable period of suspension or interruption, and the Contract shall be modified in writing accordingly. Provided that a claim therefor shall be asserted in writing as soon as practicable after the termination of such adjustment or interruption; and provided further that no adjustment shall be made to the extent that performance by the Contractor would have been prevented by other causes, even if the Work had not been so suspended or interrupted.
- c. Paragraph b above shall not be construed to apply to specific periods of delay or suspension for which advance provision has been made such as anticipated weather conditions.

11. 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 the Authority's convenience, the Contractor shall be entitled to receive payment for the 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.

12. DELAY AND DAMAGES

The Contractor shall not be liable for any failure or delay in the completion of the Work resulting from any cause beyond his control and without his fault or negligence, including but not restricted to, compliance with any instructions or priority requests of the Federal Government or any agency thereof, or the Government of the Virgin Islands, acts of God, acts of the public enemy, acts or omissions of the Authority or its agents, acts of another contractor in the performance of a contract with the Authority, fires, floods, epidemics, unusually severe weather, strikes, lockouts, embargoes, wars, riots, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault of or negligence of both the Contractor and such subcontractors and suppliers: Provided, that the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the Contract, notify the Contracting Officer in writing of the delay and causes of delay: and provided, further, that the Contractor shall be excused for delays of suppliers only if the Contracting Officer shall determine that the materials or supplies to be furnished are not procurable in the open market. Any excusable failure or delay hereunder shall extend the Contract completion date accordingly, upon agreement by the Authority, but shall not affect any of the other terms or conditions of the Contract.

13. 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.

Ownership of all goods, materials, and equipment provided under this Contract shall remain with the Contractor until such time as they are properly installed and accepted by the Authority. Risk of loss or damage to the goods shall remain with the Contractor until completion of installation and the Authority's formal acceptance of the work. No part of the goods shall be considered the property of the Authority until the installation is complete and accepted in accordance with the terms of this Contract

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.

14. CONTRACT PRICE

The Work shall be performed for the Contract price. This Contract price shall be subject to change only in accordance with Clauses 12 hereof and shall be inclusive of all duties, fees, and levies, and all taxes imposed with respect to the performance of the Work.

15. TERMS OF PAYMENT

- a. Payments will be in accordance with the following for equipment and supplies:
 - i. Unless otherwise specified in the 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.
 - ii. Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery or other performance.
- b. Payments will be made in accordance with the following for services work:

- i. The total number of increments of progress payments for Services Work shall not exceed 6. Each increment of progress payments shall equal the Contract price for services work.
 - ii. Progress payments will be made within thirty (30) days after the issuance of a Certificate of Acceptance by the Project Coordinator of an itemized and duly certified invoice issued by the Contractor based upon completion of each increment of Services Work as listed under paragraphs 2 herein.
 - iii. In making such partial payments there shall be retained ten percent (10%) on the invoiced amount until final completion and acceptance of the Services Work: Provided, however, that the Contracting Officer at any time after fifty percent (50%) of the Services Work has been completed, may approve the payment of any of the remaining partial payments in full.
 - iv. All Services Work and materials covered by partial payments made shall thereupon become the sole property of the Authority, but the provisions shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Authority to require the fulfillment of all the terms of the Contract.
 - v. Upon completion and acceptance of the Work, the amount due the Contractor under this Contract will be paid upon the presentation of a properly executed and duly certified invoice thereof. The Contractor shall furnish the Authority with a release, if required, of all claims against the Authority arising under and by virtue of the Contract, other than such claims, if any, as may be specifically accepted by the Contractor from the operation of the release in stated amounts to be set forth therein.
- c. The obligation of the Authority to make any of the payments required under the Contract shall, in the discretion of the Contracting Officer, be subject to (i) workmanship, (ii) any claims, which the Authority may have against the Contractor and (iii) satisfaction of payment obligations to subcontractors or third party's making claims against Contractor with regard to the performance of the Scope of Work. Any overpayment to the Contractor shall, unless otherwise adjusted, be repaid to the Authority upon demand.
- d. Upon presentation of a request for payment, Contractor shall provide a statement of payments made or owed to all subcontractor(s), which statement shall be independently verified by the subcontractor(s). The Authority reserves the right to withhold payments to Contractors that fail to satisfy subcontractor claims(s).

16. EQUIPMENT, CONSTRUCTION, AND PROFESSIONAL SERVICES WARRANTIES

a. Equipment and Construction Warranty:

- i. The Contractor warrants that all equipment provided, and all construction performed under this Contract will conform to the Specifications and be free from defects in materials, fabrication, and workmanship. The Contractor further warrants that the equipment will be new, of good quality, free from defects in title, design, and materials, and will comply with all applicable laws, regulations, codes, and standards.
- ii. The Contractor warrants that for a period of six (6) years from the date of installation and formal acceptance by the Authority, all equipment and materials furnished will be free from defects, and all construction work will meet the requirements set forth in the Contract documents. Upon notice from the Authority, the Contractor shall promptly repair or replace any defective equipment or construction at no additional cost to the Authority.

b. Professional Services Warranty

- i. The Contractor warrants that all professional services provided under this Contract will be performed by qualified personnel, in a competent and professional manner, and in accordance with industry best practices. This warranty will remain in effect for a period of one (1) year from the date of formal acceptance of the services by the Authority.
- ii. Should any defects or deficiencies in the services arise during the warranty period, the Contractor shall, upon notice from the Authority, promptly correct such defects at no additional cost to the Authority. If the Contractor fails to remedy the defect, the Authority may correct the deficiencies and charge the Contractor for the cost thereof.

c. General Warranty Terms

In the event that any equipment or services are repaired or replaced under these warranties, the repaired or replaced items shall be subject to the original warranty terms, starting anew from the date of repair or replacement.

- i. The Contractor's obligation under this warranty is limited to the repair or replacement of any defective part of the equipment, construction, or workmanship, at no charge to the Authority. The Authority reserves the right to use its own personnel to make such repairs, provided that the use of such personnel does not interfere with normal operations. The cost of using Authority personnel will be deducted from the project cost.

17. DELIVERY, TITLE, AND RISK OF LOSS

- a. All goods, materials, equipment, and supplies provided under this Contract shall be delivered to the Site by the Contractor in accordance with the delivery schedule specified in the Contract or as otherwise agreed upon by the parties.
- b. Title to all goods, materials, equipment, and supplies shall remain with the Contractor until they are fully installed and accepted by the Authority. Until such time, the Contractor shall bear all risk of loss or damage to the goods, materials, equipment, and supplies, whether delivered to the Site or in transit.
- c. The Authority shall not assume responsibility for any loss, damage, theft, or destruction of the goods, materials, equipment, or supplies prior to their installation and acceptance. The Contractor shall be solely responsible for insuring the goods, materials, equipment, and supplies until title passes to the Authority upon installation and acceptance.
- d. Notwithstanding the transfer of title upon installation and acceptance, the Contractor shall remain responsible for any loss or damage to the equipment covered under the six-year equipment warranty, which shall begin upon acceptance of the Work by the Authority. The Contractor shall ensure that all warranty obligations for equipment are met for the duration of the warranty period.

18. 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 the 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 delivery. If rejected, the Goods will be held for disposal at the 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.

19. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES

- a. The Contractor shall comply strictly with all federal and local laws, codes, and regulations
- b. Should any amendments or additions to territorial laws, codes, or regulations subsequent to the date of advertisement for bids affect any designs or requirements set forth in the Work so as to increase the Contract price or extend the Contract completion date, such amendments or additions shall be deemed to be changes within the meaning of Clause 9 hereof.
- c. The Contractor represents that all of the equipment and construction materials shall be of suitable grade, used for the purpose intended and that the Work shall be in accordance with acceptable United States engineering, construction, and commercial practices.

20. OTHER CONTRACTS

The Authority may undertake or award other contracts for work on the same site. The Contractor shall fully cooperate with such other contractors and the Authority. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by the Authority.

21. 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.

22. PATENT INFRINGEMENT

- a. The Contractor shall indemnify and save the Authority harmless from damages arising out of any claims that the possession or use of the materials or equipment manufactured or furnished by the Contractor, its subsidiaries or any of its suppliers infringe on Letters Patent of the United States of America in accordance with the following:
- b. In the event that the use of the Work or any part thereof shall be enjoined by judicial decree, the Contractor shall (i) replace, at its own expense, any materials, or equipment or part thereof, the use of which shall have been enjoined with non-infringing materials or equipment with equivalent capacity and performance, or (ii) procure for the Authority the right to continue to use the materials or equipment or part thereof, or

- (iii) in the case of equipment or part thereof, modify the same so as to avoid such claims;
and
- c. The Contractor, with the assistance and cooperation of the Authority, shall defend any suit or prosecution brought against the Authority based upon such claim of patent infringement and shall pay all damages, costs and expenses, including attorney's fees, in connection therewith or arising therefrom.

23. INSURANCE

The Insurance requirements are as set forth in the attached Exhibit A

24. PERFORMANCE BOND

- a. The Contractor shall furnish a performance bond in an amount equal to 100% of the Contract Value.
- b. Bonds in amounts of \$1,000.00 or less will be in multiples of \$100 and in amounts exceeding \$5,000.00 in multiples of \$1,000: Provided, however, that the amount of the bond shall be fixed by the Authority at the lowest sum that fulfills all conditions of the Contract.
- c. Bonds shall remain in effect throughout the entire period of the Work, as well as during any warranty period, which shall not be less than one (1) year from the date of the Authority's final acceptance of the Work.
- d. The surety on any bond furnished in pursuance of this Contract must be authorized to do business in the Virgin Islands (See Treasury Department Circular 570 dated June 1, 1965.) and have a minimum Best's rating of A-.
- e. If any surety becomes unacceptable to the Authority, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the Authority, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Authority and of persons supplying labor or materials in the prosecution of the Work.
- f. Performance Bonds exceeding \$75,000.00 must comply with this paragraph, unless modified with the approval of the Governing Board

25. PAYMENT BOND

- a. The Contractor shall furnish a Payment Bond in an amount equal to 100% of the Contract Value, guaranteeing payment to all laborers, suppliers, and subcontractors for materials provided and services performed under this Contract.

- b. The Payment Bond shall remain in effect throughout the duration of the Work and until all subcontractors, laborers, and suppliers have been paid in full. The Contractor is responsible for maintaining the bond and ensuring that it covers any changes or modifications to the Contract that affect the Contract Value.
- c. The surety on the Payment Bond must be authorized to do business in the Virgin Islands and must have a minimum Best's rating of A-, as per the standards outlined in Treasury Department Circular 570.
- d. In the event any claim or lien is filed against the Site or the Work due to the Contractor's failure to pay for labor, materials, or services, the Contractor shall promptly satisfy or discharge the claim. If the Contractor fails to do so, the Authority may invoke the Payment Bond to resolve the claim, and the Contractor shall be liable for any costs, expenses, or legal fees incurred by the Authority in enforcing the bond.
- e. Failure by the Contractor to provide the Payment Bond or maintain its validity throughout the project may result in suspension of payments under the Contract or termination of the Contract at the Authority's discretion.

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 employee, agents and invitees. It is the intention of the parties that this paragraph shifts the cost of all insurance, whether benefiting the 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 or require the Authority to contribute to any settlement.
- d. Notwithstanding any other provisions of this Agreement to the contrary, neither the Authority or Contractor shall be liable whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for punitive, special, indirect, incidental or consequential losses or damages, including

loss of profits, use, opportunity, revenues, financing, bonding capacity, or business interruptions; provided that the limitation of liability set forth in this Section shall not apply to Contractor's: (i) indemnity obligations with respect to Third-Party Claims, (ii) willful misconduct, and/or (iii) gross negligence. "Third-Party Claim" means a claim by any person other than (i) a Party or (ii) person providing or receiving indemnity under this Contract.

- e. The terms and conditions discussed herein are separate and distinct from Liquidated damages terms.

27. LIENS

- a. The Contractor shall indemnify and hold the Authority harmless from all laborers', materialmen's, and mechanics' liens on the Work, 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. The Contractor shall ensure that the Work and the Site remain free and clear of all liens and encumbrances resulting from the performance of the Work.
- b. Final payment for the Work, as provided in Clause 14, shall not be due until the Contractor has supplied the Authority with a complete release of all laborers', materialmen's, and mechanics' liens arising out of the services, labor, and materials furnished by the Contractor (or any of its subcontractors) under the Contract. The Contractor shall also provide an affidavit stating that, to the best of its knowledge and information, the releases cover all labor and materials for which a lien could be filed. However, if any subcontractor refuses to provide a release, the Contractor may furnish a bond satisfactory to the Authority to indemnify it against any such lien. If any lien remains unsatisfied after all payments have been made, the Contractor shall promptly refund to the Authority all amounts that the Authority has paid to discharge such liens, including all related costs and expenses, such as attorney's fees. This refund shall be made within thirty (30) days after the Authority submits an invoice for the payment.

28. RIGHT TO AUDIT

Contractor shall establish and maintain a reasonable accounting system that enables the Authority to readily identify Contractor's assets, expenses, costs of goods, and use of funds. The Authority shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Contractor, including, but not limited to those kept by the (Contractor), its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this Agreement and for a period of five years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the Authority, whether during or after completion of this Agreement, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the Authority along with an adequate workspace and access to photocopying machines. Such records shall be made available to the Authority during normal business hours at the Contractor's office or place of business and subject to a three-day written notice/without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Authority.

Contractor shall ensure the Authority has these rights with Contractor's employees, agents, assigns, successors, and subcontractor, and the obligation of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to Authority.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Authority unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the Authority in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the Authority for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Authority may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Authority's findings to Contractor.

29. CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract nor is there any agreement or understanding for a commission, percentage, brokerage, or contingent fees, in connection with obtaining this contract. For breach or violation of this provision 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.

30. GRATUITIES

The Authority may, by written notice to the Contractor, terminate 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 towards securing the Contract or securing favorable treatment with respect to the performance of such Contract. The Authority's findings hereunder shall be conclusive.

In the event this Contract is terminated pursuant to this paragraph, 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 less than three nor more than ten times the costs incurred or paid by the Contractor in providing any such gratuities to any such officer or employee.

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

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 the Contract to the extent applicable. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

34. EFFECTIVE DATE OF CONTRACT

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. 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.

36. OTHER REQUIREMENTS

All of the reports, information, data, studies, reports, memoranda documents, etc., prepared or assembled by Contractor pursuant to the Work are confidential and Contractor agrees that they

shall not be made available to any individual or organization without the prior written approval of the Authority.

All documents and data, written or otherwise generated by Contractor under the Contract including original drawings, estimates, reports, specifications, calculations, field notes, data, etc., and work product are to become the property of and shall be delivered to the Authority. Contractor to retain a once reproducible copy of these documents generated by the Contractor.

The contractor shall remove from the Work any person assigned thereto who is deemed by the Authority to be objectionable and shall indemnify and hold harmless the Authority regarding any claim arising out of such action. The contractor shall not remove or reassign its Project Manager in charge of the Work, or its other key personnel designated in the Contract without the prior approval of the Authority unless such person is no longer employed by the Contractor.

37. STANDARD OF CARE

The standard of care applicable to Consultant's services will be the degree of skill and diligence normally practiced by professionals or consultants performing the same or similar services.

38. 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, the Virgin Islands Water and Power Authority, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. The contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Island law.

39. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds, including FEMA and HUD CBDG funding. 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.

40. EQUAL EMPLOYMENT OPPORTUNITY

- a. 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.

- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) 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."

41. 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.”

42. COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) 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 (a) through (d) of this section.

43. CLEAN AIR ACT

- a. 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.
- b. 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.
- c. 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.

44. FEDERAL WATER POLLUTION CONTROL ACT

- a. 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.
- b. 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.
- c. 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.

45. SUSPENSION AND DEBARMENT

- a. This contract is a covered transaction for the 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).
- b. 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.

- c. 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.
- d. 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.”

46. 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.

47. ACCESS TO RECORDS

- a. 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 representative’s 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.
- b. 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.
- c. The contractor agrees to provide the FEMA Administrator or his authorized representative’s access to construction or other work sites pertaining to the work being completed under the contract.

48. 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.

49. 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.

50. 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.

51. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT 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.

52. PROCUREMENT OF RECOVERED MATERIALS

- a. 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.
- b. 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>."

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WAPA INSURANCE REQUIREMENTS

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A. Liability and Workers Compensation Insurance Requirements					
<p>During construction, Contractor and/or its general contractor are to carry the liability and workers' compensation insurances set out below. Subcontractors are to carry the same coverages but required limits may be amended at the discretion of the Contractor for subcontractors to reflect the size of their contracts, subject to a minimum limit of \$1,000,000 each for Commercial General Liability, Automobile Liability and Employers Liability. After receipt of evidence of insurance for any subcontractor, WAPA reserves the right to require limits up to those required for the Contractor.</p> <p>Once operations have begun, Contractor and/or its general contractor shall have in place and at all times maintain the below liability and workers' compensation insurances.</p>					
	Coverage Type	Minimum Limit		Maximum Deductible or Retentions	
1.	Commercial General Liability	\$5,000,000*	Combined single limit per occurrence and i n the aggregate where applicable	\$100,000	Per occurrence
2.	Automobile Liability	\$1,000,000*	Combined single limit per accident	\$100,000	Per accident
3.	Employers Liability	\$2,000,000*	Each accident for bodily injury by accident Each employee and policy limit for bodily injury by disease	\$100,000	Each accident or employee (for disease)
4.	Workers Compensation	Statutory requirements	Per occurrence	N.A.	N.A.
5.	Professional Liability	\$2,000,000*	Per occurrence and i n the aggregate	\$25,000	Per occurrence
* Combination of primary and excess or umbrella liability policies. Any combination of primary and excess limits is acceptable if the total equals or exceeds the specified amount.					
Liability Insurance Terms and Conditions					
	a.	Occurrence Basis	The primary General Liability policy and any Excess or Umbrella Liability policy that provides additional limits over the primary General Liability policy shall be "occurrence-based" policies. Claims-made policies will not be accepted.		
	b.	Additional Insured	The General Liability policy and any Excess or Umbrella Liability policy shall be endorsed to name WAPA as an additional insured. Any such policy shall contain language that: "Such insurance as afforded by this policy for the benefit of WA PA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WA PA shall be excess of and noncontributing with insurance afforded by this policy."		
	c.	Completed Operations	The Contractor and any subcontractors' General Liability coverage in place during construction shall include Completed Operations coverage,		

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WAPA INSURANCE REQUIREMENTS

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			which coverage is to continue for a minimum of two years following completion of construction.
	d.	Defense Costs	Defense costs in all primary liability policies shall be “outside the limit”, i.e., the full policy limits are for the payment of damages.

B.	Environmental Impairment Liability Insurance Requirements		
<p>Contractors are to carry Environmental Impairment Liability (“EIL”) insurance with a minimum limit of \$2,000,000 annual aggregate. EI L coverage is to be maintained during the full term of the contract and for five years following completion of construction. The EIL policy (or policies if the limit is met with a combination of primary and excess policies) are subject to the following terms and conditions:</p> <ol style="list-style-type: none">1. There shall be no exclusion for prior acts or conditions of which the insured is unaware.2. The EIL policy shall be endorsed to name WAPA as an additional insured. Any such policy shall contain language that "Such insurance as afforded by this policy for the benefit of WAPA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WAPA shall be excess of and noncontributing with insurance afforded by this policy."3. The EIL policy will cover liability for property damage or bodily injury to third parties, including clean-up or remediation of any damaged property.4. The insurer may but is not required to participate i n the defense of any claim.5. Defense costs are to be covered as part of the annual aggregate limit.			
C.	Property Insurance Requirements		
<p>Property policy(ies) shall cover all risks of direct physical loss to the property, including coverage for collapse and transit (with respect to property i n transit that will become a part of buildings or structures under construction).</p> <p>Boiler and machinery coverage on a breakdown basis are to be included in the All Risk policy or provided i n a separate policy. Testing of any equipment is to be included.</p> <p>There shall be no exclusion for the perils of explosion, collapse or underground damage.</p>			
1.	Builder’s Risk Property Insurance (to be in place from inception of construction through final testing and acceptance at which time property insurance converts to the permanent property insurance program (see C.2.),		
	Coverage Type	Minimum Limit	Maximum Deductible or Retentions

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WAPA INSURANCE REQUIREMENTS

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	Earth Movement including Earthquake, Volcanic Activity, and Subsidence.	Replacement Value of Insurable Real and Personal Property	Annual Aggregate	5% of Replacement Value	Per Occurrence
	Hurricane/ Windstorm		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Debris Removal	20% of Replacement Value	Per occurrence	Included	
	Ordinance or Law	10% of Replacement Value	Per occurrence	Included	
	Expediting Expense	20% of Replacement Value	Per occurrence	Included	
	All Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property	Per occurrence	\$100,000	Per Occurrence
	Soft Costs	100% of costs which would be incurred again following a total loss at the end of construction.		45 Days	Per Occurrence
2.	Property Insurance (Permanent program to be in place simultaneously with the expiration or cancellation of the Builders’ Risk coverage (see C. 1.) and shall remain in place continuously through the term of the Agreement)				
	Coverage Type	Minimum Limit		Maximum Deductible or Retentions	
	Earth Movement including Earthquake, Volcanic Activity, and Subsidence.	Replacement Value of Insurable Real and Personal Property.	Annual Aggregate	5% of Replacement Value	Per Occurrence
	Hurricane/ Windstorm		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Debris Removal	20% of Replacement Value	Per occurrence	Included	

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WAPA INSURANCE REQUIREMENTS

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	Ordinance or Law	10% of Replacement Value	Per Occurrence	Included	
	A l l Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property	Per Occurrence	\$500,000	Per Occurrence
	Extra Expense/ Expediting Expense Combined	20% of Replacement Values	Per Occurrence	Included	
	Replacement Power Extra Expense	To the extent coverage is reasonably available, 100% of incremental expense that WA PA incurs to replace the annual output of the Facility for one year following a covered occurrence, such amount to be determined with WA PA each year.		45 Days	Per Occurrence
	Property Insurance Terms and Conditions				
	a.	Coinsurance	No property policy may contain a coinsurance clause.		
	b.	Ordinance or Law	Each property policy is to cover the costs incurred i n repairing or replacing the damaged property to meet current building codes. Coverage is to be provided for: Loss to the Undamaged Portion of the Building Demolition Cost Increased Cost of Construction		
	c.	Terrorism	Terrorism coverage is not required.		
	D. Requirements Applicable to All Insurance Policies				
	1.	Insurance Company Rating	All insurance companies shall be rated A- or better by A.M . Best’s. Should an insurance company’s rating fall below A-, Seller (or its general contractor) shall replace that insurance company with a qualifying insurance company within 60 Days.		
	2.	Notice of Cancellation	Each insurance company shall provide written notification to WA PA 60 Days prior to the effective date of any cancellation or non-renewal.		
	3.	Evidence of Compliance with Insurance Requirements at Insurance Date	Evidence is to consist of an original certificate of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate shall show: <ul style="list-style-type: none">□ The name of the insurance company□ The policy period□ The policy number□ The description of the property□ The name of the Seller/Policyholder□ WA PA as an additional insured (General Liability and Excess or Umbrella Liability only)		

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			<ul style="list-style-type: none">□ W A PA as loss payee (Builders Risk Property Insurance and Property Insurance including Replacement Power Extra Expense)□ The 60 Days cancellation notice <p>Liability insurance certificates are to be on ACORD form 28 or its equivalent for property insurance and ACORD form 25 or its equivalent for liability insurance. Evidence of workers' compensation insurance shall be issued by the appropriate Workers' Compensation Administration bureau of the Government of the Virgin Islands.</p>
	4.	Evidence of Renewal or Replacement Policies	Contractor shall advise WA PA of any renewals or replacements of the required insurances by providing the same documentation required i n C.3 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.