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1. CONTRACT DOCUMENTS:

The Contract consists of the following CONTRACT DOCUMENTS, including all additions, deletions, and modifications incorporated therein before the execution of the Contract Agreement:

A. STATUTORY AND PROCEDURAL DOCUMENTS:

- (1) Advertisement for Bids (Invitation for Bids)
- (2) Instructions to Bidders (Information for Bidders)
- (3) Proposal (Bid)
- (4) Proposal Guaranty (Bidder's Bond)
- (5) Contract Agreement
- (6) Contract Bonds (Performance and Payment Bonds)

B. GENERAL CONDITIONS OF THE CONTRACT

C. DETAILED SPECIFICATION REQUIREMENTS

D. DRAWINGS

2. DEFINITIONS, INTENT, CORRELATION, AND STREAMLINING:

A. DEFINITIONS:

Wherever the following abbreviations and terms, or pronouns in place of them, are used in the Contract Documents, the intent and meaning shall be interpreted as follows:

(1) **ARCHITECT:** The architect, architectural firm, association, or corporation employed by the Owner, or, in case of the termination of his employment, his successor designated by the Owner, to furnish the working drawings and specifications in the Contract Documents, to prepare the Contract Documents, prepare details and explanatory drawings, and provide architectural instructions necessary for the execution of the Work, and to check and approve manufacturers' data and shop drawings and when so provided in his contract, to exercise general administration of the Contract under the direction of the Contracting Officer.

(2) **BIDDER:** The person, or persons, firm, partnership, association, corporation, or combination thereof, submitting a Bid for the Work, or any portion thereof, acting directly or through a duly authorized representative.

(3) **COMMISSION:** The Armory Commission of Alabama or any agency that may be designated by the Legislature as its successor.

(4) **CONTRACT AGREEMENT:** The written Contract Agreement executed between the Owner and the successful Bidder, covering the performance of the Work, by which the Contractor is bound to perform the Work and furnish the labor, materials and equipment under the terms of the Contract Documents, and by which the Owner is obligated to compensate him therefor at the mutually established and accepted rate or price, or as hereinafter provided.

(5) **CONTRACT BONDS:** The approved bonds furnished by the Contractor and his Surety to guarantee both completion of the Contract in accordance with the Contract Documents and prompt payment to all persons supplying him or them with labor, materials, supplies, etc.

(6) **CONTRACTOR:** The person or persons, firm, partnership, association or corporation, or combination thereof, that has entered into a Contract with the Owner for any work covered by the Contract Documents, acting directly or through his agents or employees.

(7) **CONTRACTING OFFICER:** The Contracting Officer of the Armory Commission, acting either upon his own initiative or through duly authorized representatives and inspectors, acting severally within the scope of the particular duties entrusted to them or the authority given them.

(8) **MODIFICATIONS OF THE GENERAL CONDITIONS:** Changes or modifications of the parts of the Armory Commission's Contract General Conditions.

(9) NOTICE TO PROCEED: A proceed order issued by the Contracting Officer after final execution of the Contract fixing the time within which the Contractor shall begin the prosecution of the Work.

(10) OWNER: The State of Alabama acting by and through the Armory Commission.

(11) BID: The written offer for the Work contemplated, when prepared and submitted by the Bidder in the required manner on the prescribed Bid Form, properly signed and guaranteed.

(12) SPECIAL CONDITIONS: Additional special or general requirements that are necessary and peculiar to the particular project and which are not included in the parts of the Armory Commission's standard General Conditions.

(13) SPECIFICATIONS: The general term comprising the Statutory and Procedural Documents, General Conditions of the Contract, the Detailed Standard and Project Specification requirements, together with all modifications thereof and all Addenda thereto.

(14) SUBCONTRACTOR: Any properly qualified individual, firm, association, or corporation undertaking the performance of any part of the Work under the terms of the Contract Documents by virtue of an agreement between himself and the Contractor with the written approval of the Contracting Officer.

(15) SURETY: The corporate body, licensed under the laws of Alabama, bound with and for the Contractor for the full and complete performance of the Contract and also for the payment of all claims recoverable under the Contract Bonds.

(16) THE PROJECT: The total construction designed by the Architect of which the Work performed under the Contract Documents may be the whole or a part.

(17) THE WORK: The Work includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

(18) USPFO: The United States Property & Fiscal Officer. The USPFO is the State of Alabama representative for the National Guard Bureau, Washington, D.C., an agency of the United States Department of Defense.

B. INTENT:

The intent of the Contract Documents is to include all labor, materials, water, fuel, tools, plants, utility, and transportation services, and all other incidental services and expenses necessary or required for proper execution and completion of the work.

C. CORRELATION:

(1) ORDER OF PRECEDENCE: Should any discrepancy arise between the various elements of the Contract Documents, precedence shall be given the same in the following order:

- (a) The Contract Agreement
- (b) The Detailed Specification Requirements
- (c) Details appearing on the Drawings
- (d) The Working Drawings

(2) WORDS AND TERMS: Words used in the documents will be given their usual and common meaning unless from the entire Contract it is clear that some other meaning was intended. Words describing material or work which have a well known technical meaning or trade meaning unless specifically defined in the Contract Documents, will be construed in accordance with such well known meaning recognized by architects, engineers, and the trades. Technical terms will be construed in a technical sense, and a specially widely adopted trade meaning afforded certain terminology will be taken into account in any interpretation containing such terminology.

(3) GENERAL AND SPECIAL CONDITIONS: Where both General and Special Conditions relate to the same thing, the Special will prevail; that is, the specific language will take precedence over the more general wording. However, where both the General and Special Conditions may be given reasonable effect, both are to be retained.

(4) PRINTING, TYPING, AND WRITING: When a printed portion of the Contract Documents cannot be reconciled with a typewritten portion, the latter will prevail. Various types of duplicating processes will be considered typewriting instead of printing. Also, if one is typewritten and the other written in longhand, the one written in longhand will govern. Likewise, written numbers will govern.

Written specifications will take precedence over drawings. If a correction is made in specifications or on a drawing and the original conflicting statement is not crossed out, then the revision, written in or drawn in, will be considered what was meant.

Obvious clerical or drafting errors or omissions revealed by perusal of the Contract Documents as a whole will be discounted in determining the intent of the parties, insofar as this may be accomplished without contravention of legal principles or public policy.

(5) DRAWINGS AND SPECIFICATIONS: The intent of the Specifications is to outline or indicate items of work on both, that cannot readily be shown on the Drawings and, further, to indicate types and qualities of materials and workmanship. Drawings and Specifications will be considered complimentary, and items of work mentioned or indicated on one and not on the other shall be included as if mentioned in both, except items definitely noted "Not in Contract" or marked "N.I.C."

(6) CONTRACTOR'S CHECK: Prior to the execution of the Work, the Contractor shall check the Drawings and Specifications and shall immediately report all errors, discrepancies, and/or omissions discovered therein by letter to the Architect with a copy to the Contracting Officer. All such errors, discrepancies, and/or omissions will be adjusted by the Architect and/or the Contracting Officer, who will notify the Contractor. Any adjustments made by the Contractor without prior approval will be at his own risk and the settlement of any complications arising from such adjustment will be at his own expense.

(7) EXPLANATIONS: Any doubt as to the meaning of the Specifications, or any obscurity as to the wording of them, will be explained by the Architect and all directions and explanations requisite or necessary to complete, explain or make definite any of the provisions of the Specifications and Drawings and given them due effect, will be given by the Architect in writing.

D. STREAMLINING:

(1) OMISSION OF WORDS AND PHRASES: The detailed Standard and Project Specifications are of abbreviated or "streamlined" type and include incomplete sentences in order to avoid cumbersome and confusing repetition of expression. Omissions of words or phrases such as "the Contractor shall," "in conformity therewith," "as noted," or "as indicated on the Drawings," "according to the Drawings," are intentional. Omitted words or phrases will be supplied by inference in the same manner as they are when a "note" occurs on the Drawings.

Wherever in the Specifications or upon the Drawings, APPROVED, AUTHORIZED, CONTEMPLATED, CONSIDERED NECESSARY, DEEMED NECESSARY, DESIGNATED, DIRECTED, GIVEN, ORDERED, PERMITTED, PRESCRIBED, REQUIRED, or words of like import are used, they shall be construed to mean and intend "by the Contracting Officer;" and, similarly, the words ACCEPTABLE, SATISFACTORY, or words of like import shall be construed to mean acceptable to or satisfactory "to the Contracting Officer," unless otherwise expressly stated or the Contract clearly indicates another meaning.

Words "furnish," "install," "perform," "provide," and "work" shall mean that the Contractor shall furnish, install, perform, provide and connect up complete in operative condition and use all materials, equipment, apparatus, and required appurtenances of the particular item to which it has reference.

(2) APPLICABLE PUBLICATIONS: Reference to standard specifications, associations, bureaus, organizations, or industries, and the like, shall mean the latest edition of such references adopted and published at date of Advertisement for Bids.

3. ADDITIONAL DETAIL DRAWINGS AND INSTRUCTIONS:

Further information and instructions may be issued by the Contracting Officer or prepared by the Architect and transmitted to the Contractor by the Contracting Officer or the Architect, during the progress of the Work by means of additional detail drawings or otherwise as deemed necessary to make more clear or specific the Drawings and Specifications in the Contract Documents, when and as required by the Work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

Any discrepancies found between the Drawings and Specifications and site conditions shall be immediately reported in writing to the Architect who will promptly correct such error or omission in writing. Any work done by the Contractor after his discovery of such discrepancies, errors, or omissions shall be done at his own risk.

In case of differences between small and large scale drawings, the large scale drawings shall govern.

Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other portions of the Work.

Where the word "similar" occurs on the Drawings, it shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection with other parts of the Work.

If the Contractor considers that any work is required in a manner to make it impossible to produce first-class work, or should discrepancies appear among the Contract Documents, the Contractor shall request interpretation before proceeding with such work. If he fails to make such request, no excuse will thereafter be entertained for failure to carry out the work in a satisfactory manner.

4. COPIES FURNISHED CONTRACTOR:

Except as otherwise provided, all required copies of Drawings and Specifications reasonably necessary for the execution of the Work will be furnished to the Contractor by the Architect or Contracting Officer without charge. Other copies requested will be furnished at reproduction cost.

5. SHOP DRAWINGS:

The Contractor shall check the Contract Drawings for accuracy and verify with field measurements as necessary. He shall submit to the Architect, with his criticism and/or approval, all layouts, detail schedules, shop drawings, and setting or erection drawings as required by the Specifications or requested by the Contracting Officer for proper installation of materials, without causing delay in the Work. The Contractor shall check Subcontractors' shop drawings for accuracy and see that work contiguous with and having bearing on work indicated on shop drawings is accurately and distinctly illustrated. Shop drawings shall be dated, numbered consecutively, show working and erection dimensions and necessary details, including complete information for connecting to other work. Any work required by shop drawings that is fabricated by the Contractor prior to approval shall be at his own risk.

All drawings and schedules, accompanied by a letter of transmittal containing project number, number of drawings, titles, or other pertinent data, shall be submitted to the Architect in quintuplicate by the Contractor (with his stamp of approval thereon) sufficiently in advance of construction requirements to allow checking, correcting, resubmitting, and rechecking. A duplicate of said letter, only, shall be mailed simultaneously to the Contracting Officer. If shop drawings show variations from the requirements of the Contract Documents because of standard shop practice or other reasons, specific mention of such variations shall be made in the letter of submittal.

Satisfactory drawings will be so identified, dated, approved, and three copies or sets returned to the Contractor by the Architect. Should shop drawings be disapproved, three sets will be returned to the Contractor by the Architect indicating corrections and changes to be made.

Such corrections, changes, including design and artistic effect, shall be made by the Contractor and bound sets of shop drawing prints shall be submitted in quintuplicate to the Architect until final approval is obtained. No corrections or changes indicated on shop drawings will be considered as Extra Work.

The approval of shop drawings, schedules, and setting drawings will be general and, except in departures found to be in the interest of the Owner and so minor as not to involve a change in the Contract Price or performance time, shall not be construed (1) as permitting any departure from contract requirements; (2) as relieving the Contractor of the responsibility for any error in details, dimensions, or otherwise that may exist in shop drawings or schedules; (3) as approving departures from Drawings and Specifications or from additional details or instructions previously furnished by the Architect, unless he has in writing called attention to such deviations at the time of submission, and secured written approval.

6. PROJECT AND RECORD DOCUMENTS:

The Contractor shall keep on the site of the work in good order, at least one set of his Contract Drawings including shop drawings, Specifications, and all authorized Change Orders, and shall at all times give the Owner, Architect, and their authorized representatives access thereto.

The Contractor shall also keep in his office on the site of the work the two sets of Contract Drawings and Specifications furnished by the Owner, herein referred to as RECORD DRAWINGS, on which shall be recorded all work as built or installed, and such other information as is specified or required. He shall carefully draw and letter notes of explanation, in ink, on both sets of Record Drawings, or furnish two copies of detailed sketches as the Contracting Officer may require, as a fully dimensioned record of all work. The Record Drawings, supplemented by any detailed sketches deemed necessary, shall indicate the Work "AS BUILT". The Contractor will be required to prepare new drawings if the indications on the Record Drawings or the detailed sketches are illegible or otherwise unsatisfactory for future reference. Each record or correction made on such drawings will be initialed and dated by the Supervisor or Inspector.

7. OWNERSHIP OF DRAWINGS:

All original or duplicated Drawings and Specifications, and other data prepared by the Architect, and copies thereof prepared and furnished to the Contractor by the Architect are the property of the Armory Commission.

Upon completion of the Work all copies of Drawings and Specifications, with the exception of two sets retained by the Contractor, and two sets of RECORD DRAWINGS, shall be returned by the Contractor to the Architect. The Record Drawings will be delivered by the Architect to the Owner on Completion of the Work.

8. SAMPLES:

The Contractor shall, without undue delay, furnish and submit to the Architect any samples that require the Architect's approval, and also any samples that may be requested by the Contracting Officer, of any and all materials or equipment he proposes to use, and shall prepay all shipping charges on the samples. Samples shall be furnished sufficiently in advance to allow the Architect and/or Contracting Officer reasonable time for examination, investigation, or consideration, without delay to the Work.

The Contractor shall provide Subcontractors and his prospective manufacturers, material dealers or suppliers with complete information of pertinent contract requirements and all transactions therewith shall be through the Contractor.

No materials or equipment of which samples are required to be submitted for approval shall be used on the Work until such approval has been received, save only at the Contractor's risk and expense.

Each sample shall have a label indicating the material represented, its place of origin and the name of the producers, the Contractor, and the building or Work for which the material is intended. Where manufacturer's printed instructions for installations are required, duplicate copies of such directions shall be submitted with samples.

Samples of finished material shall be marked to indicate where the materials represented are required by the Drawings or Specifications.

A letter, submitting each shipment of samples shall be mailed by the Contractor to the Architect containing a list of the samples, the name of the building or Work for which the materials are intended, and the brands of materials and names of the manufacturers.

After a material has been approved by the Architect with the approval of the Contracting Officer, if required, no additional samples of that material will be considered and no change in brand or make will be permitted.

Approved samples of hardware, in good condition, may be suitably marked for identification and used in the Work.

The approval of any sample by the Architect or Contracting Officer will be only for the characteristics or for the uses named in such approval and shall not be construed in itself to change or modify any Contract requirements.

Failure of any materials to pass the specified tests will be sufficient cause for refusal to consider any further samples of the same brand or make of that material for use in the Work.

Test samples as the Architect or Contracting Officer may deem necessary, will be produced from the various materials delivered to the Contractor for use in the Work. If any of these test samples fail to meet the specification requirements, any previous approval will be withdrawn and such materials shall be subject to removal and replacement by the Contractor with materials or equipment meeting the specification requirements, the defective materials may be permitted to remain in place subject to proper credit or adjustment of the Contract Price as hereinafter set forth under DEDUCTIONS FOR UNCORRECTED WORK.

The costs of tests will be borne by the Owner except where laboratory tests as hereinafter specified are required by the specifications.

9. PROGRESS SCHEDULE AND CHARTS:

The Contractor shall within five days after date of commencement of work, prepare and submit to the Architect for approval, a practicable schedule showing the order in which the Contractor proposes to carry on the Work, the date he will start the several salient features, including procurement of material, plant, and equipment and the contemplated date of completion of same.

The schedule shall be in the form of a conventional Progress Chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart his actual progress, preferably at the end of each week, but in any event at the end of each month, and deliver to the Architect two copies thereof and attach one to his monthly Application for Partial Payment.

If, in the opinion of the Architect or the Contracting Officer, the Contractor falls materially behind his progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Architect or the Contracting Officer may require him to increase the number of shifts, and/or overtime operations, and/or the amount of construction plant, and to submit for approval such supplementary schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

Failure of the Contractor to comply with the requirements of the Architect or the Contracting Officer as above set forth will be grounds for determination by the Architect or the Contracting Officer that the Contractor is not prosecuting the Work with such diligence as will insure completion within the Contract Time. Upon determination of unreasonable delay, the Owner may terminate the Contractor's right to proceed with the Work, or any separable part thereof.

10. MATERIALS, EQUIPMENT, AND EMPLOYEES:

Unless otherwise stipulated, the Contractor shall furnish all material, equipment, tools, labor, water, light, power, transportation, other services or facilities and incidentals for the proper execution and completion of the Work. Unless otherwise stipulated, all materials and equipment incorporated in the Work shall be new.

All labor shall be performed in the best and most workmanlike manner by persons skilled in their respective assignments or trades. Workmen whose work is unsatisfactory to the Architect or the Contracting Officer, or who are considered unfit or unskilled, or otherwise objectionable, shall be dismissed upon notice from the Architect or Contracting Officer.

11. EQUIPMENT AND MATERIAL DEVIATIONS:

Whenever any material or piece of equipment is identified on the plans or in the specifications by reference to manufacturer's names, model numbers, etc., it is intended to establish a required standard of design and quality, and is not intended to limit competition. It shall be expressly understood that the phrase "or approved equal" is hereby inserted following the naming of manufacturers for any material or equipment, whether such phrase occurs in the specifications, or not.

When the specifications and/or drawings indicate only one or two manufacturers' names for material or equipment to be used, the bidder may submit his bid based on material or equipment of manufacturers not named but considered by the bidder to be equal to the standard of design and quality as specified; however, such substitutions must be approved by the Architect. If the bidder elects to bid on a substitution without securing written approval of the Architect prior to receipt of bids, then it will be understood that proof of compliance with specified requirements is the direct responsibility of the bidder and no such material or equipment may be purchased or installed without written approval by the Architect.

When the specifications and/or drawings indicate three or more manufacturers' names for material or equipment to be used, the bids shall be based upon the equipment and material so named, unless the bidder desires to bid on an "approved equal". In case the bidder desires to substitute an "equal" he must secure written approval by the Architect of qualification to bid prior to date for receiving bids. If no request to substitute an "approved equal" is made by the bidder, and approved by the Architect, then it will be expressly understood that all such material and equipment so named or described in the specifications and on the drawings will be furnished in full accordance with the Contract Documents.

12. ROYALTIES; PATENTS; AND COPYRIGHTS:

The Contractor shall pay all royalties and license fees. The Contractor shall hold and save the Owner and his agents and employees harmless from liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner.

If the Contractor has information that any process, article or item specified or delineated by the Architect is an infringement of a patent, or a copyright, he shall promptly give such information to the Architect.

13. SURVEYS, PERMITS, LAWS, AND REGULATIONS:

The Contractor shall provide competent engineering services to execute the Work in accordance with contract requirements. He shall verify the figures given for the contours, approaches and locations shown on the Drawings before undertaking any construction work and be responsible for the accuracy of the finished work. Without extra cost to Owner, he shall engage a licensed surveyor if necessary to verify boundary lines, keep within property lines, and shall be responsible for encroachments on rights or property of public or surrounding property Owners.

The Contractor shall establish all base lines for the location of the principal components of the Work and make all detail surveys necessary for construction, including slope stakes, batter boards and other working points, lines and elevations.

If the Contractor finds any errors or discrepancies, or that any previously established references have been destroyed or misplaced, he shall promptly notify the Architect.

The Contractor shall obtain and pay for all licenses and permits and shall pay all fees and charges for connection to outside service and the use of property, other than the site of the Work, required for the execution and completion of the Work.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and building code requirements applicable to or bearing on the conduct of the Work unless in conflict with Contract requirements. If the Contractor ascertains at any time that any requirement of the Contract is at variance with applicable laws, ordinances, regulations, or building code requirements, he shall promptly notify the Architect, and any necessary adjustment of the Contract will be made as hereinafter specified under CHANGES IN THE WORK.

The Contractor shall pay all applicable Federal, State and local taxes and assessments on the real property of the site of the Work.

Wherever the law of the place of building requires a special sales tax, consumer, use, occupation, or other tax, the Contractor shall pay such tax.

14. PROTECTION OF WORK AND PROPERTY:

The Contractor shall at all times adequately maintain, guard and protect his own work from damage, and safely guard and protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner.

He shall adequately protect adjacent property as provided by law and Contract Documents.

Any damage to existing structures, or the interruption of a utility service shall be repaired or restored promptly by and at the expense of the Contractor.

The Contractor shall protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which are not required to be removed or do not unreasonably interfere with construction, as may be determined by the Architect or Contracting Officer, and be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials, on grass areas by equipment.

Care shall be taken by the Contractor in felling trees that are to be removed to avoid any unnecessary damage to vegetation or other trees that are to remain in place. Any limbs or branches unavoidably broken during such operations shall be trimmed with a clean cut and painted with an approved tree priming compound. The Contractor may be required to replace or restore at his own expense all vegetation not protected and preserved, as above required, that may be destroyed or damaged.

The Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities required for protection by state or municipal laws and regulations or local conditions.

The Contractor shall take all necessary precautions for the safety of employees on the Work and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on or about or adjacent to the premises where the Work is being performed. He shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public, and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the latest edition of the Manual of Accident Prevention in Construction of the AGC to the extent that such provisions are not in contravention of applicable laws.

In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor may act, without previous or special instructions from the Architect, or the Contracting Officer, at his discretion; and shall so act, without appeal, if so instructed or authorized by the Architect or the Contracting Officer.

Any compensation claimed by the Contractor as Extra Work on account of emergency work, together with substantiating documents in regard to expense, shall be submitted through the Architect to the Contracting Officer who will determine the amount of compensation.

15. CLIMATIC CONDITIONS:

When so ordered by the Architect or Contracting Officer, the Contractor shall suspend any work that may be subject to damage by climatic conditions.

16. TEMPORARY UTILITIES:

Unless otherwise agreed to by the Owner in writing, the Contractor shall provide all necessary utility services, at his expense, until the job is complete and accepted by the Owner. All utilities services shall include, but not be limited to, the following: electricity; gas; water; sewer; telecommunications; waste (dumpster) disposal, etc.

The Contractor shall provide all utility services as necessary to install and/or test all work and materials, and further to protect and maintain all work and materials against injury or damage from heat or cold and from humidity/dampness. The Contractor shall continue to provide these services, at his expense, until completion and final acceptance by the Owner of all work in the Contract. The Contractor may be relieved of utilities expenses, in whole or part, should the building(s) be fully occupied by the Owner prior to such final acceptance of the work. The Contractor may petition in writing for the Owner to consider this relief of utilities expenses (either partially or wholly) due to this full occupation of the building(s) by the Owner. The Owner must provide a written and signed agreement in order to relieve Contractor of the utilities expenses. Any such date of relief shall be as established in this written agreement.

In the absence of any such written agreement by the Owner, the Contractor shall continue to provide heat and conditioned air as necessary to protect all work and materials against injury from dampness and heat/cold until final acceptance of all work in the Contract as indicated herein.

A. HEATING: During cold weather or the winter months, the Contractor shall provide heat and weather protection as follows:

(1) At all times during the placing, setting, and curing period of concrete, sufficient heat to insure the heating of spaces to not less than 50° F. or in accordance with the manufacturer's recommendations.

(2) From the beginning of the application of plaster and during the setting and curing period, sufficient heat to produce a temperature of not less than 50° F. or in accordance with the manufacturer's recommendations.

(3) For a period of ten days previous to the placing of interior wood finish work and throughout the placing of wood finish and other interior finishing, varnishing, painting, etc., and until final acceptance of the Work, sufficient heat to produce a temperature of not less than 70° F. or in accordance with the manufacturer's recommendations.

(4) Provide temporary closures for windows, doors, and all temporary openings and take every reasonable precaution to prevent the escape of warm air from or entrance of cold air into the building. Except as elsewhere called for, the temperature required in the unoccupied spaces will be from 45° F. to 65° F.

B. VENTILATION and AIR CONDITIONING: During hot weather or the summer months, the Contractor shall provide ventilation and/or air conditioning as required in order to maintain the temperature of the interior of the building(s) between 70° F. and 80° F. The Contractor shall also maintain the humidity level of the interior of the building(s) within the ranges specified in the Contract Documents.

C. In all cases, Contractor shall be responsible to maintain the appropriate temperature range and humidity levels as is recommended by the manufacturer of all the various building materials, furnishings, equipment, components, systems, etc. to prevent any damage due to heat or cold or humidity.

D. Unless otherwise agreed to by the Owner in writing, the Contractor shall continue to provide these utility services, at his expense, until the job is complete and accepted by the Owner.

17. INSPECTION OF THE WORK:

The Architect, the Contracting Officer, any Federal or State agency having jurisdiction, and their representatives shall have access at all times to the Work for inspection whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection.

All materials, workmanship, processes of manufacture, and methods of construction, if not otherwise stipulated in the Specifications, shall be subject to inspection, examination, and test by the Architect (or his

duly authorized representative) at any and all places where such manufacture and/or construction are being carried on. The Architect shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises.

The Contracting Officer will appoint or assign architectural and engineering Inspectors, with designated duties and restricted authority, to inspect the Work as he may direct, or to make special inspections requested in advance by the Contractor, and to report to him progress of the Work, and manner of procedure, quality of the material and workmanship, and compliance with the Contract Documents. Inspectors shall have the authority to give directions for the safety and convenience of the public, and concerning the conduct of the Work; to advise the Contractor to avoid his making errors and to expedite his correction of deviations in the Work, to reject materials, workmanship, or equipment clearly defective or otherwise not in accordance with the Drawings and Specifications; but neither the presence nor absence of such Inspectors shall relieve the Contractor from any contract requirement.

Neither the Inspectors, nor the Architect, will be authorized to revoke, alter, relax, or waive, any requirements of the Contract Documents, to finally approve or accept any portion of the Work or to issue instructions contrary to the Drawings and Specifications; nor shall they supervise and direct work for the Contractor, nor unreasonably interfere with the Contractor's operations beyond the extent necessary to make certain that the Work is being carried out according to the contract requirements.

Any advice which they may give the Contractor shall not be construed as binding the Owner or the Contracting Officer in any way, nor as releasing the Contractor from any of the contract requirements.

If the Contractor considers any work demanded of him to be outside the contract requirements, or any record or ruling of the Architect or an Inspector to be unfair, he may immediately, upon such work being demanded or ruling made, request written instructions from the Architect, or Inspector, or within ten days file an appeal with the Contracting Officer, stating clearly and in detail the basis of his objections. However, pending the Contracting Officer's decision on such appeal, no work shall be done in disregard of the rulings of the Architect or Inspector or his instructions on items of work affected by such appeal.

The Contractor shall furnish promptly, without extra compensation, all reasonable facilities, labor, and material necessary for safe and convenient access, inspection, and tests that may be required by the Contracting Officer or the USPFO. All inspections and tests will be performed in such a manner as not to cause unnecessary delay of the work. Special, full size, and performance tests shall be as described in Sections of the Specifications. The Contractor shall be charged any extra cost of inspection incurred by the Owner on account of material and workmanship not being ready at time of inspection set by the Contractor.

Should it be considered necessary or advisable by the Owner, or by the representatives of the Chief, National Guard Bureau, at any time before final acceptance of the entire work to make an examination of work already completed by uncovering, or removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and materials. If such work is found to be defective in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all expense of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract Documents, work of examination and replacement will be considered and compensated for as Extra Work ordered by the Architect or Contracting Officer and, in addition, if completion of the Work has been delayed thereby, an extension of time will be granted for such delay as estimated by the Architect or Contracting Officer. Federal funding support of the cost for examination and replacement of satisfactorily completed work that requires removal or that is damaged due to inspection requirements is subject to prior approval by the Chief, National Guard Bureau, or his duly authorized representative.

When the Architect considers the work as nearing completion, or substantially completed, after being notified by the Contractor that the Work is completed, the Architect and the Contracting Officer or his representatives, duly authorized in writing, will inspect all the work included in the Contract Documents. If it is found that the Work has not been satisfactorily completed, the Architect will notify the Contractor, in writing, as to the work to be done or the particular defects to be remedied to place the work in condition satisfactory for acceptance. After the work has been satisfactorily completed, the Architect and the Contracting Officer will make the final inspection or inspections and notify the Contractor in writing when the Work has been finally accepted.

18. SUPERINTENDENCE AND SUPERVISION:

The Contractor shall give his personal superintendence of the Work, using his best skill and personal attention, or have a qualified superintendent, and any necessary assistants acceptable to the Contracting Officer, on the Work at all times during progress, and with full authority to act in his behalf. The Contractor shall not remove a superintendent from the Work who is satisfactory to both him and the Architect, except with the Architect's consent, unless he ceases to be in his employ.

All instructions given the superintendent in the Contractor's absence by the Architect or the Contracting Officer or his representative shall be considered as given the Contractor. In general, the more important verbal instructions will be confirmed in writing to the Contractor; and upon written request of the Contractor, any other instructions will be confirmed in writing.

The Contractor shall carefully study and compare all Drawings, Specifications, other instructions and related data, and at once report in writing to the Architect, with a copy to the Owner, any inconsistency, discrepancy, error, or omission he may discover, for adjustment by the Architect. However, he shall not be liable to the Owner for any damage resulting from any errors or deficiencies in the Contract Documents, except that adjustments made without prior approval will be at his own risk.

19. CHANGES IN THE WORK:

The Owner may at any time make changes in the Work by changes in the Drawings and Specifications of the Contract and within the general scope thereof. Changes will be in the form of a Contract Change Order based upon a written request of the Owner and a written proposal of the Contractor. In making any change, the charge or credit for altering, adding to or deducting from the Work shall be determined by one of the following methods selected by the Owner:

A. By mutually agreed price or prices which will be added to or deducted from the Contract Price. Additions to the contract price shall include the Contractor's overhead and profit but shall not exceed 15 percent. Where subcontract work is involved, the total mark-up for the Contractor and subcontractors shall not exceed 25%. This percentage allowance for overhead and profit shall include the cost of superintendent, timekeeper, clerks, watchmen, use of small tools, incidental job burdens, and general office expenses. There will be no additional or separate charges for these items. No allowance for overhead and profit shall be figured on any change which involves a net credit to the Owner.

B. By estimating the number of unit quantities of each part of the Work which is changed and then multiplying the estimated number of such unit quantities by the applicable unit prices, if any, set forth in the Contract, or other mutually agreed unit prices. The percentage and criteria for overhead and profit shall be as detailed in paragraph A above. There will be no additional or separate charges allowed for superintendent, timekeeper, clerks, watchmen, use of small tools, incidental job burdens, and general office expenses.

C. By ordering the Contractor to proceed with the Work on a cost-plus-percentage-of-the-cost basis and to keep and present in such form as the Contracting Officer will approve, duplicate itemized statements of the cost of the change together with all vouchers therefor, detailed as to the following items:

(1) Name, classification, date, daily hours, total hours, rate, and extensions for such laborers and pro-rata charges for foreman.

(2) Designation, dates, daily hours, total hours, rental rates, and extensions for each piece of equipment or power tool actually used.

(3) Quantity of each material item actually used and extension.

(4) Transportation on materials used.

(5) Power and all items of cost such as cost of property damage, public liability and workmen's compensation insurance; also social security, old age and unemployment insurance.

(6) The percentage allowance for the Contractor's overhead and profit shall not exceed a total of 15 percent of the net cost of above items (1), (2), (3), (4) and (5). The percentage allowance for overhead

shall include the cost of bonds, superintendent, timekeeper, clerks, watchmen, use of small tools, incidental job burdens, general office expenses, and insurance other than items listed above in paragraph C(5).

(7) The credits to the Owner for deductive changes shall be the net cost to the Contractor, excluding project overhead and profit.

The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices to be used in estimating the value of any change that might be ordered.

Federal funding support of any change or extra is subject to prior approval by the Chief, National Guard Bureau, or his/her duly authorized representative.

20. CLAIMS FOR EXTRA COST OR EXTRA WORK:

If the Contractor claims that any instructions, by drawings or otherwise, are not in accordance with the Contract Documents, and involve extra cost under the Contract, he shall give the Architect and the Contracting Officer written notice thereof within ten (10) days after receipt of such instructions, and in any event before proceeding to execute the work, and the procedure shall then be as above under 19, CHANGES IN THE WORK. Otherwise no such claim will be considered.

Federal funding support of any change or extra is subject to prior approval by the Chief, National Guard Bureau, or his/her duly authorized representative.

21. DEDUCTIONS FOR UNCORRECTED WORK:

If the Owner deems it expedient to correct work injured or installed at variance with the Contract requirements, the Owner may, if he finds it to be in his interest, allow part or all of such work to remain in place, provided an equitable deduction from the Contract Price is offered by the Contractor and approved by the Contracting Officer.

22. DELAYS; EXTENSION OF TIME:

Delays: A delay beyond the Contractor's control at any time in the progress of Work by an act or omission of the Owner or the Architect, or the Contracting Officer or by any other Contractor employed by the Owner, or by strikes, fires, abnormal floods, tornadoes, or other cataclysmic phenomenon of nature, may entitle the Contractor to an extension of time in which to complete the Work as determined by the Contracting Officer provided, however, that the Contractor shall immediately give written notice to the Architect of the cause of such delay.

No such extension shall be made for delays due to rain, wind, flood, or other natural phenomenon of normal intensity for the locality, or for delay occurring more than seven (7) days before written claim therefor is submitted by the Contractor.

Extension of Time: In the event any material changes, alterations or additions are made as herein specified which in the opinion of the Contracting Officer, will require additional time for the execution of any work under the Contract, then, in that case, the time of completion of the Work will be extended by such a period of time as may be fixed by the Contracting Officer, and his decision shall be final and binding upon the Owner and the Contractor, provided that in such case the Contractor within seven (7) days after being notified in writing of such changes, alterations or additions shall request in writing an extension of time, but no extensions of time shall be given for any minor changes, alterations or additions. The Contractor shall not be entitled to any reparation or compensation on account of such additional time or extensions of time required for the execution of the Work. Only claims for compensation that are approved in accordance with the procedures outlined as above in Paragraph 19, CHANGES IN THE WORK and in Paragraph 20, CLAIMS FOR EXTRA COST OR EXTRA WORK and are also approved in writing by the Owner shall be considered. Otherwise no such claims will be considered.

23. CORRECTION OF WORK BEFORE FINAL PAYMENT:

Any defective work, whether the result of poor workmanship, the use of defective materials, damage through carelessness of the Contractor or his employees, or any other cause, shall be removed from the premises within ten (10) days after written notice is given by the Architect, and promptly replaced and re-

executed by the Contractor in accordance with the contract requirements and without expense to the Owner. The Contractor shall also bear the expense of making good all work of the Owner or his other contractors destroyed or damaged by such removal and replacement.

24. CORRECTION OF WORK AFTER FINAL PAYMENT:

Verification and approval of the Final Application for Payment and the making of the Final Payment by the Owner shall not relieve the Contractor of responsibility for faulty materials or workmanship. The Owner or the User shall promptly give notice of observed defects due to faulty materials or workmanship, and any damage to other work resulting therefrom, and in accordance with the terms of any special guarantees provided by the Contract, and the Contractor shall promptly replace any such defects discovered within one year from the date of written acceptance of the Work or Final Payment therefor, whichever is prior. All questions arising hereunder, notwithstanding Final Payment, shall be decided by the Contracting Officer.

25. OWNER'S RIGHT TO CORRECT DEFICIENCIES:

Upon failure or neglect by the Contractor to properly prosecute, or to perform the Work in accordance with the Contract Documents, including any requirements with respect to the Progress Schedule and/or Charts, and after ten (10) days' written notice to the Contractor by the Contracting Officer, the Owner may, without prejudice to any other remedy he may have, correct such deficiencies and may deduct the actual cost thereof to the Owner from payment then or thereafter due to the Contractor, provided, however, that the Contracting Officer shall approve both such action and the amount charged the Contractor.

26. OWNER'S RIGHT TO TERMINATE CONTRACT:

If the contractor refuses or fails to prosecute the work, or any separate part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, or if the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to Subcontractors for material or labor, or disregard laws, ordinances, or the instructions of the Contracting Officer or the Architect, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner, upon the certificate of the Contracting Officer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor, and his Surety, ten (10) days' written notice, terminate the employment of the Contractor and take possession of the promises and of all materials, tools, equipment, and appliances thereon and finish the Work by whatever method he may deem expedient. In such cases, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price shall exceed the expense of finishing the work, including compensation for additional architectural, engineering, managerial, and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Contracting Officer.

27. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT:

If the Work should be stopped under an order of any court, or other public authority, for a period of ninety (90) days, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon fourteen (14) days' written notice to the Owner and the Contracting Officer, stop work or terminate this Contract at the Owner(s) will reimburse the Contractor for all work properly executed and any proven loss sustained upon any plant or materials and any other proper item of damage certified by the Contracting Officer.

28. APPLICATIONS FOR PARTIAL AND FINAL PAYMENTS:

The Contractor shall, within ten (10) days after the Notice to Proceed, submit to the Architect on the application for payment form approved or furnished by the Contracting Officer, a complete breakdown or schedule of values of the Contract price showing the value assigned to each of the various parts of the work, including an allowance for overhead and profit, aggregating the total contract price so divided as to facilitate payments to subcontractors. Upon approval, this breakdown of the contract price, unless later found to be in error, shall be used as a basis for all applications for payment.

Unless otherwise provided in the Special Conditions or the Contract Agreement, the Contractor may make application for partial payment once each calendar month based on an approved estimate of work completed. The application shall be submitted through and certified by the Architect. The Owner will make partial payments to the Contractor as soon as practicable after receipt of the certified application for payment.

An application for partial payment may include the Contractor's cost of materials not yet incorporated in the work but delivered and suitably stored on the site.

In making partial payments there shall be retained not more than five (5) percent of the estimated amount of work done and the value of materials stored on the site, and after 50 percent completion has been accomplished, no further retainage will be withheld. The retainage above set out shall be held until final completion and acceptance of all work covered by the contract.

If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (41 U.S.C. 15), a release may also be required of the assignee at the option of the Contracting Officer or USPFO of the State. The retention on partial payments of Federal funds shall be determined by the USPFO of the State in conformance with the Defense Acquisition Regulations (DAR).

The Contractor, immediately after being notified by the Contracting Officer that all other requirements of the Contract have been completed, shall give notice of said completion by an advertisement for a period of four (4) successive weeks in some newspaper of general circulation published within the county where the work was performed. Proof of publication of said notice in duplicate shall be furnished by the Contractor to the Architect by affidavit of the publisher and a printed copy of the notice published in duplicate. If no newspaper is published in the county where the work was done, the notice may be given by posting at the Court House for thirty (30) days and proof of same made by the Probate Judge or Sheriff and the Contractor. Final payment shall be due as noted by the Contracting Officer's verification of the Final Application for Payment.

29. VERIFICATION, CERTIFICATION, AND APPROVALS FOR PAYMENT:

When the Contractor has made application for payment as above, the Contracting Officer shall, not later than the date when each payment falls due, verify the application for Payment to the Contractor for such amount as he decides to be properly due, or state in writing to the Contractor his reasons for withholding verification in whole or in part, and place the application in line for payment.

No such verification nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with the Contract.

All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of material and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

30. PAYMENTS WITHHELD:

The Owner may withhold payment of the whole or any part of a verified or approved Application for Payment to such an extent as may be necessary to protect himself from loss on account of any of the following causes discovered subsequent to its verification or approvals:

- A. Defective work.
- B. Evidence indicating probable filing of claims by other parties against the Contractor.
- C. Failure of the Contractor to promptly make payments to subcontractors, or for materials, labor, equipment and supplies.
- D. Damage to another contractor under a separate Contract with the Owner.

When the above grounds are removed, applications for payments will then be verified and/or approved for amounts not previously verified and approved because of them.

31. CONTRACTOR AND SUBCONTRACTORS INSURANCE:

The Contractor shall not commence work under the Contract until he has obtained all insurance required thereunder from an insurance company authorized to do business in Alabama, and shall have filed the certificate of insurance showing type of coverage and correlation between the insurance furnished and that required or the certified copy of the insurance policy with the Contracting Officer through the Architect; nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance has been so obtained and filed. Each insurance policy shall contain a clause that it shall not be cancelled by the insurance company without thirty (30) days' written notice to the Owner of intention to cancel. The amounts of such insurance shall not be less than the following:

A.	Workmen's Compensation and Employer's Liability:	\$ Statutory
B.	Public Liability, Bodily Injury and Property Damage:	
	Injury or death of one person:	\$ 50,000
	Injury or death to more than one person in a single occurrence:	\$200,000
	Property Damage:	\$ 50,000
C.	Automobile and Truck Liability, Bodily Injury and Property Damage:	
	Injury or death to one person:	\$ 50,000
	Injury or death to more than one person in a single occurrence:	\$200,000
	Property Damage:	\$ 50,000
D.	Indemnity:	SEE BELOW

The Contractor shall assume all liability for and shall indemnify and save harmless, the State, Owners, Architect, and employees of the Armory Commission, from all damages and liability for injury to any person or persons, and injury to or destruction of property, including the loss of use thereof, by reason of an accident or occurrence arising from operations under the Contract, whether such operations be by himself or by a Subcontractor or by any one directly or indirectly employed by either of them, occurring on or about the premises, or the ways and means immediately adjacent, during the term of the contract, or any extension thereof, and shall also assume the liability for injury and/or damages to adjacent or neighboring property by reason of work done under the Contract.

The Contractor shall take out and maintain during the life of the Contract, insurance covering his liability under the above save harmless provision, and shall show evidence of coverage on the certificate of coverage previously noted.

The obligations of the Contractor under this paragraph 31-D shall not extend to the liability of the Architect, his agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

32. OWNER'S FIRE INSURANCE (NOT USED)

33. FIRE INSURANCE, EXTENDED COVERAGE, VANDALISM AND MALICIOUS MISCHIEF:

Unless otherwise provided in the Modified General or Special Conditions, the Contractor shall, at his own expense, insure the Work included in the Contract against loss or damage by fire and against loss or damage covered by the standard extended coverage endorsement, with an insurance company or companies qualified to do business in Alabama and acceptable to the Owner, the amount of insurance at all times to be at least equal to the amount paid on account of work or materials incorporated in the Work and plus the value of work or materials furnished or delivered but not yet paid for by the Owner. The policies shall be in the names

of the Owners and the Contractor and "all Subcontractors" as their interests appear, and certificates of the insurance company as to the amount and type of coverage, terms of policies, etc., shall be delivered to the Contracting Officer through the Architect before partial payments are made.

When changes in scope of the work by written Change Order or Change Orders/Supplemental Agreements aggregate an amount equal to 15% of the total contract, including the Change Orders/Supplemental Agreements, the insurance coverage included under this heading shall be increased accordingly. Proof of coverage shall be established by endorsement to the original policy or by reissue of the original policy to include the added coverage, or in accordance with any other acceptable policy of the insuring company for increasing the coverage.

34. CONTRACT BONDS:

In order to insure the faithful performance of each and every condition, stipulation, and requirement of the Contract, and to indemnify and save harmless the Owner from any and all damages, either directly or indirectly (arising out of any failure to perform same), the successful Bidder to whom the Contract is awarded shall, within ten (10) days from the date of the award, unless otherwise stipulated in the Modified General Conditions, furnish at his own expense and file with the Owner an acceptable Surety Bond in an amount equal to one hundred (100) percent of the contract bid price of the Contract as awarded. Said Bond shall be made on the approved bond form, shall be furnished by a reputable surety company authorized to do business in the State of Alabama, shall be countersigned by an authorized agent resident in the State who is qualified for the execution of such instruments, and shall have attached thereto power of attorney of the signing official. In case of default on the part of the Contractor, all expenses incident to ascertaining and collecting losses suffered by the Owner under the Bond, including architectural, engineering, administrative, and legal services, shall lie against the Contract Bond for Performance of the Work.

In addition thereto, the successful Bidder to whom the Contract is awarded shall, within ten (10) days, unless otherwise stipulated in the General Conditions, furnish at his expense and file with the Owner an acceptable surety bond for Payment of Labor, materials, equipment and supplies, payable to the Owner in an amount equal to fifty (50) percent of the Contract Price, with the obligation that the Contractor shall promptly make payment to all persons furnishing him or them with labor, materials, or supplies for, or in the prosecution of the Work, including the payment of reasonable attorneys fees incurred by successful claimants or plaintiffs in suits on said bond. The date of neither bond shall be earlier than the date of the Contract Agreement.

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the State, or if any such surety shall fail to furnish reports as to his financial condition from time to time as requested by the State, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the State or of persons supplying labor or materials in the prosecution of the work contemplated by the contract.

Bonds shall remain in force during the entire guarantee period stipulated in the Contract.

35. DAMAGES:

Should either party of the Contract suffer damages because of any wrongful act or neglect of the other party or of anyone employed by him, claim shall be made in writing to the other party within a reasonable time of the first observance of such damage, and not later than the date of the Application for Final Payment, except as expressly stipulated otherwise in the case of faulty work or materials.

36. LIENS:

The Owner may request a complete release of all liens and if this is done, neither the Final Payment nor any part of the retained percentage shall become due until the Contractor shall deliver to the Owner a complete release of all liens arising out of the Contract, and, an affidavit that so far as he has knowledge or information the releases include all the labor and material for which a lien could be filed; but the Contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

37. ASSIGNMENT:

The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder without the previous written consent of the Owner.

38. MUTUAL RESPONSIBILITY OF CONTRACTORS:

If the Contractor or any of his Subcontractors cause any loss or damage to any separate contractor with a prior, concurrent, or subsequent contract on the Work or on the site, or any undue delay to such separate contractor on the Work or on the site, and if such contractor makes claim against the Owner, on account of any loss so sustained, the Owner shall notify the Contractor who shall indemnify and save harmless the Owner against any expenses arising therefrom.

39. SEPARATE CONTRACTS:

The Owner may award other contracts for additional new construction, buildings or equipment, or for reconstruction, alteration, equipment, and improvement of existing buildings on the site, and the Contractor shall fully cooperate in the storage of materials and the detailed execution of work, coordinate and integrate his operations with such other contractors, and carefully fit his own work to that provided under other contracts, as he may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

The Contractor, including his Subcontractors, shall keep himself informed of the progress and the detailed work of other contractors and shall notify the Contracting Officer immediately of lack of progress or defective workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with his own operations of the work.

40. SUBCONTRACTS:

Concurrent with the execution of the Contract by the Contractor he shall submit in writing in five (5) counterparts to the Architect for approval by the Architect and the Contracting Officer the names of the Subcontractors proposed for the work. Subcontractors that have been so approved may not be changed thereafter except at the request of or with the approval of the Contracting Officer.

The Contractor shall not employ any subcontractor to whom the Owner or Contracting Officer may have any objection, but he will not be required to employ any subcontractor against whom he himself has a reasonable objection.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of Subcontractors, and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall be construed as creating any contractual relationship between any Subcontractor and the Owner.

41. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS:

The Contractor shall cause appropriate provisions to be inserted in all Subcontracts relative to the Work, to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors, and to give the Contractor the same power as regards terminating any provisions of the Contract Documents.

The Articles, Divisions, Sections, or Paragraphs of the Specifications are not intended to control the Contractor in dividing the work among Subcontractors or to limit the work performed by any trade.

The Contractor shall be responsible for the coordination of Subcontractors, of the trades, and material men engaged upon his work.

The Contractor shall, without additional expense to the Owner, utilize the services of specialty subcontractors on those parts of the work which are specified to be performed by specialty subcontractors.

The Contracting Officer or the Architect will not undertake to settle any differences between the Contractor and his Subcontractors or between Subcontractors.

42. ARCHITECT'S STATUS:

The Architect named in the Contract Documents, who prepared and furnished the Working Drawings and the Specifications contained therein, will prepare details and explanatory drawings, and provide instructions during the progress of the work for transmittal by the Contracting Officer or Architect as above set forth under paragraph 3, ADDITIONAL DETAIL DRAWINGS AND INSTRUCTIONS. He will make his check of manufacturers' data and shop drawings submitted by the Contractor for the Work as above set forth under 5, SHOP DRAWINGS.

The Architect will endeavor to require the Contractor to strictly adhere to the plans and specifications, to guard the Owner against defects and deficiencies in the work of Contractors, and shall promptly notify the Contracting Officer in writing of any significant departure in the quality of materials or workmanship from the requirements of the plans and specifications, but he does not guarantee the performance of the contracts.

The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, unless spelled out in the Contract Documents, and he shall not be liable for results of the Contractor's failure to carry out the work in accordance with the Contract Documents.

The Architect shall have authority to require the Contractor to stop the Work whenever in his opinion it may be necessary for the proper performance of the Contract. The Architect shall not be liable to the Owner for the consequences of any decision made by him in good faith either to exercise or not to exercise his authority to stop the Work.

The Architect shall not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of the Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.

43. ARCHITECT'S DECISIONS:

The Architect's decisions in matters relating to the artistic effect of his work shall be final, if within the other terms of the Contract.

44. CONTRACTING OFFICER'S DECISIONS:

Except as hereinafter provided, any claim or question concerning the interpretation or meaning of the Contract Documents, or concerning a breach of the Contract, shall be submitted to the Contracting Officer and his decision shall be final, binding, and conclusive on the parties to the Contract. He shall have executive authority to enforce and make effective such decisions and orders as the Contractor fails to carry out promptly.

45. CASH ALLOWANCES:

No cash allowances shall be included in the Contract Price, unless specifically set forth under SPECIAL CONDITIONS or MODIFICATIONS of the GENERAL CONDITIONS. When so included, the Contractor shall include in the Contract Price all allowances named therein and shall cause the work so covered to be done by such subcontractors, material, and/or equipment men, and for such sums as the Contracting Officer approves, and the Contract Price shall be adjusted in conformance therewith. The Contract Price shall include all the Contractor's expense, overhead, and profit, and no allowance, other than that included in the Contract Price, will be paid by the Owner.

46. USE OF PREMISES; SANITARY PROVISIONS:

The Contractor shall take every precaution against injuries to persons or damages to property.

The Contractor shall comply with local and State regulations governing the operation of premises which are occupied and shall perform the Contract in such a manner as not to interrupt or interfere with the operation of any other facility.

The Contractor shall store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of his work or the work of any other contractors.

Unless otherwise provided, temporary storage sheds, shops, and office facilities may be erected on the premises with the approval of the Architect or the Contracting Officer. Such temporary buildings and/or utilities shall remain the property of the Contractor and be removed at his expense upon completion of the Work, unless the Owner authorized their abandonment without removal.

Necessary crossings of curbs, sidewalks, roadways, or parkways shall be protected against damage, and any damage shall be repaired by or at the expense of the Contractor.

The Contractor shall not place upon the Work or any part thereof loads inconsistent with the safety of that portion of the Work.

No Contractor shall perform any work necessary to be performed after regular working hours or on Sundays or legal holidays without extra compensation.

The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements and regulations of the local and State Department of Health and as directed.

47. CUTTING AND PATCHING:

The Contractor shall do all necessary cutting, fitting, and patching of the Work that maybe required to properly receive the Work to make its several parts join together properly, receive and provide for the work of various trades, and be received by the work of other contractors, or as required by Drawings and Specifications to complete the Work. After such cutting, he shall replace or restore or repair and make good all defective or patched work as required by the Architect. He shall not cut, excavate, or otherwise alter any work in a manner or by a method or methods that will endanger the Work, adjacent property, workmen, the public, or the work of any other contractor.

The Contractor shall have his Subcontractor check the location of all sleeves, openings, slots, etc., for the piping, ducts, breeching, conduits, louvers, grilles, fans, etc., as they are laid out on the job.

Provision for openings, holes, and clearances through walls, beams, floors, ceilings, and partitions shall be made and checked by the Contractor and/or his Subcontractor in advance of constructing such parts of the Work, and unnecessary, superfluous or dangerous cutting avoided.

Pipes passing through concrete or masonry walls shall be protected by pipe sleeves two sizes larger than the pipe, plus its insulation, to provide free movement.

Under no condition shall structural, framing, or other parts or members subjected to computed stress be cut or disturbed without the approval of the Architect. Any plates, studs, or joists, and/or rafters that are approved to be cut to execute necessary work shall be securely strapped and braced to restore their original strength by an approved method.

The Architect's approval shall be obtained before cutting or drilling holes in concrete or masonry that tend to damage or weaken the load capacity.

48. PERIODIC AND FINAL CLEANUP:

The Contractor shall periodically, or as directed during the progress of the Work, clean up and remove from the premises all refuse, rubbish, scrap materials and debris caused by his employees, his Subcontractors, or resulting from his work, to the end that at all times the premises are sanitary, safe, reasonably clean, orderly, and workmanlike. Trash and combustible materials shall not be allowed to accumulate inside buildings or elsewhere on the premises. At no time shall any rubbish be thrown from window openings.

Before final completion and final acceptance the Contractor shall remove from the Owner's property, and from all public and private property, all tools, scaffolding, false work, temporary structures, and/or utilities

including the foundations thereof (except such as the Owner permits in writing to remain); rubbish and waste materials resulting from his operations or caused by his employees; and shall remove all surplus materials, leaving the site clean and true to line and grade, and the Work in a safe and clean condition, ready for use and operation.

In addition to the above, the Contractor shall be responsible for the following special cleaning for all trades as the work shall have been completed:

- A. Cleaning of all painted, enameled, stained, or baked enamel work: Removal of all marks, stains, finger prints and splatters from such surfaces.
- B. Cleaning of all glass: Cleaning and removing of all stickers, labels, stains, and paint from all glass, and the washing and polishing of same on interior and exterior.
- C. Cleaning and polishing of all hardware.
- D. Cleaning all tile, floor finish of all kinds: Removal of all splatter, stains, paint, dirt, and dust, the washing and polishing of all floors as recommended by the manufacturer or required by the Architect.
- E. Cleaning of all manufactured articles, materials, fixtures, appliances, and equipment: Removal of all stickers, rust stains, labels, and temporary covers, and cleaning and conditioning of all manufactured articles, material, fixtures, appliances, and electrical, heating, and air conditioning equipment as recommended or directed by the manufacturers, unless otherwise required by the Architect; blowing out or flushing out of all foreign matter from all dust pockets, piping, tanks, pumps, fans, motors, devices, switches, panels, fixtures, boilers, similar features; and freeing identification plates on all equipment of excess paint and the polishing thereof.

In case of failure to comply with the above requirements for any part of the work within the time specified by the Architect, he may cause the Work to be done and deduct the cost thereof from the Contract Price on the next or succeeding Application for Payment.

49. GUARANTEE OF THE WORK:

Except as otherwise specified in the General Conditions or the Special Conditions, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the Contract, or from full occupancy of the building by the Owner, whichever is earlier.

If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Contracting Officer or Architect are required as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract requirements, the Contractor, shall, promptly upon receipt of notice from the Owner, and without expense to the Owner:

- A. Place in satisfactory condition in every particular all of such guaranteed work, correct all defects therein; and
- B. Make good all damage to the building or site, or equipment or contents thereof, which, in the opinion of the Contracting Officer or Architect, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
- C. Make good any work or material, or the equipment and contents of said building or site disturbed in fulfilling any such guarantee.

In any case where in fulfilling the requirements of the Contract or of any guarantee, embraced in or required thereby, the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the Contracting Officer and guarantee such restored work to the same extent as it was guaranteed under such other contract.

If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his Surety shall be liable for all expense incurred.

All special guarantees applicable to definite parts of the work that may be stipulated in the Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

50. POSSESSION PRIOR TO COMPLETION:

The Owner shall have the right to use any completed or partially completed part of the Work. Such use shall not be deemed an acceptance of any work not completed in accordance with the contract requirements. If, however, such prior use by the Owner delays the progress of the Work or causes additional expenses to the Contractor, an equitable adjustment in the Contract Price and/or time of completion will be made and the Contract will be modified in writing accordingly.

51. LIQUIDATED DAMAGES:

Time is the essence of the Contract. Any delay in the completion of the Work as provided for in the Contract Documents will cause inconvenience to the public and loss and damage to the Owner in interest, and in additional administrative, architectural, inspection and supervision charges.

Therefore, a time charge equal to six per cent interest per annum on the total Contract Price will be made against the Contractor for the entire period that any part of the Work remains uncompleted after the time specified for the completion of the Work as provided in the Contract Documents, the amount of which shall be deducted by the Contracting Officer from the Final Estimate, and shall be retained by the Contracting Officer out of moneys otherwise due the Contractor in the Final Payment, not as a penalty, but as liquidated damages sustained, it being mutually understood and agreed between the parties hereto that such amount is reasonable as liquidated damages.

52. USE OF FOREIGN MATERIALS:

In accordance with ACT 876 of the 1961 Regular Session of the Alabama legislature the Contractor shall use only materials, supplies, and products manufactured, mined, processed or otherwise produced in the United States or its territories, if same are available at reasonable prices.

Breaching of this agreement shall render the Contractor liable for payment of liquidated damages in the amount of not less than \$500.00 nor more than 20% of the gross amount of the contract.

This requirement applies to all contracts for public works financed entirely with State of Alabama funds.

53. WITHHOLDING OF FUNDS (1977 DEC)

A. The Contracting Officer may withhold or cause to be withheld from the prime contractor so much of the accrued payments or advances as maybe considered necessary (1) to pay laborers and mechanics, including apprentices, trainees, watchmen and guards, employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (2) to satisfy any liability of the Contractor and any subcontractor for liquidated damages under paragraph (B) of the clause entitled "Contract Work Hours and Safety Standards Act - Overtime Compensation."

B. If the Contractor or any subcontractor fails to pay any laborer, mechanic, apprentice, trainee, watchman, or guard employed or working on the site of the work all or part of the wages required by the contract, the Contracting Officer may, after written notice to the prime contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

54. DISPUTES CONCERNING LABOR STANDARDS (ASPR 7-602.23)(77 DEC)

Disputes arising out of the labor standards provisions of this contract shall be subject to the DISPUTES clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this

contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

55. DISPUTES

Except as otherwise specifically provided in this contract, and except as otherwise specifically provided by the State procedure for arbitration or other State procedure established by State law, any dispute concerning a question of fact arising under this contract which is not disposed of by mutual agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and send by registered mail, return receipt requested, a copy thereof to the Contractor at his address shown herein. Within thirty (30) days after the date of receipt of such copy, the Contractor may appeal in writing to the Governor of this State, whose written decision therein, or that of his designated representative or representatives, shall, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence, be final and conclusive: Provided, that if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. The Governor of this State may designate an individual or individuals other than the Contracting Officer, or a board, as his authorized representative to determine appeals under this Article. In connection with any appeal proceeding under this Clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision. Any sum or sums allowed to the Contractor under the provisions of this Article or under the State Arbitration proceedings or under other State procedure shall be paid subject to approval of the Chief, National Guard Bureau, for the Government's share of the cost of the Articles or work herein disputed as deemed to be within the contemplation of this contract.

56. EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION) (ASPR 7-103.18)(1978 SEP)

If, during any twelve (12) month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded Federal contracts and/or subcontracts which have an aggregate value in excess of \$10,000, the Contractor shall comply with (A) through (G) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the Regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

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; layoff 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 consideration 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, as amended by Executive Order 11375 of October 13, 1967, 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, as amended by Executive Order 11375 of October 13, 1967, 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 cancelled, 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, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, 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, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each 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 into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above Equal Opportunity Clause with respect to its own employment practices when it participates in Federally assisted construction work: *Provided,* that if the applicant so participating is a State or local government, the above Equal Opportunity Clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity Clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity Clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

57. CERTIFICATION OF NONSEGREGATED FACILITIES (1970 AUG) (ASPR 7-2003.14)

(Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing Federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause). By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are

maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of Equal Opportunity Clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES:

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

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

58. EXEMPTIONS TO EQUAL OPPORTUNITY CLAUSES (ASPR 12-805) (JUL 76)

A. *Transactions of \$10,000 or Under.* Contracts and subcontracts not exceeding \$10,000, other than Government bills of lading, are exempt from the requirements of the Equal Opportunity Clause. In determining the applicability of this exemption to any Federally assisted construction contract, or subcontract thereunder, the amount thereof rather than the amount of the Federal financial assistance shall govern. Indefinite delivery type contracts and subcontracts thereunder, basic agreements and basic ordering agreements shall include the Equal Opportunity Clause, except when the Contracting Officer (in the case of subcontractors, the prime contractor or subcontractors issuing the subcontract) determines that the amount to be ordered is not expected to extend \$10,000 in any single year. The applicability of the Equal Opportunity Clause shall be determined by the Contracting Officer at the time of award for the first year, and annually thereafter for succeeding years if any. Notwithstanding the above, the Equal Opportunity Clause shall be incorporated into such contract, subcontract, basic agreement or basic ordering agreement whenever the amount of a single order or procurement action exceeds \$10,000. Once the clause is incorporated, the contract, subcontract, basic agreement, or basic ordering agreement shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered, in any year. No Contracting Officer, Contractor, or Subcontractor, shall procure supplies or services in less than usual quantities to avoid applicability of the Equal Opportunity Clause.

B. *Work Outside the United States.* Contracts and subcontracts are exempt from the requirement of the Equal Opportunity Clause with regard to work performed outside the United States by employees who were not recruited within the United States.

C. *Contracts with State or Local Governments.* The requirements of the clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, State and local governments are exempt from the requirements of filing the annual compliance report provided for by 12-812(a) and maintaining a written affirmative action program prescribed by 12-807.1.

D. *Contracts Exempted by the Secretary of Defense in the Interest of National Security.*

(1) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security.

(2) *Requests for Exemption:* The Contracting Officer shall prepare a detailed justification for such determination which shall be submitted to the ASD(M&RA) in accordance with Departmental procedures.

The ASD(M&RA) shall submit the request for exemption to the Secretary of Defense for approval, and shall notify the Director, OFCC, within 30 days of such a determination.

E. Specific Contracts and Facilities Exempted by the Director, OFCC.

(1) *Specific Contracts.* The Director, OFCC, may exempt an agency or person from requiring the inclusion of any or all of the Equal Opportunity Clause in any specific contract or subcontract when he deems that special circumstances in the national interest so require. He may also exempt groups or categories of contracts or subcontracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the Order.

(2) *Facilities Not Connected with Contracts.* The Director, OFCC, may exempt from the requirements of the clause any of a prime contractor's or a subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the Order.

(3) *Special Circumstances.* The Director, OFCC, may exempt a contract or subcontract when he finds that special circumstances indicate that use of either of the clauses in 7-103.18 in the contract or subcontract would not be in the national interest.

(4) *Request for Exemptions.* The Contracting Officer shall submit a detailed justification for omitting or modifying the clause under (1), (2) or (3) above to the ASD (M&RA) in accordance with Departmental procedures.

(5) *Withdrawal of Exemption by the Director, OFCC.* When any contract or subcontract is of a class exempted under this paragraph 12-805, the Director, OFCC, may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgement such action is necessary or appropriate to achieve the purposes of the Order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal. In procurements entered into by formal advertising or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

59. CLEAN AIR AND WATER (1975 OCT)(ASPR 7-103.29)

(Applicable only if the contract exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by EPA, or the contract is not otherwise exempt.)

A. The Contractor agrees as follows:

(1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and

(4) To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (4).

B. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Air Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively of the Air Act (42 U.S.C. 1857c-6(c) or (d), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d).

(4) The term "Clean Water Standards" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or obtained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except there the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

(7) The term "nonexempt contract or subcontract" means a contract or subcontract of more than \$100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1-2302.4 or in FPR 1-1.2302-4 whichever is applicable) and the procedures of the Department awarding the contract.

60. CLEAN AIR AND WATER CERTIFICATION (77 JUN) (DAR 7-2003.71)

Applicable if the bid or offer exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.

The Bidder or offeror certifies as follows:

(1) Any facility to be utilized in the performance of this proposed contract is is () or is not (), listed on the Environmental Protection Agency List of Violating Facilities;

(2) He will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(3) He will include substantially this solicitation certification, including this paragraph (3), in every nonexempt subcontract.

61. *EXEMPTIONS TO ENVIRONMENTAL PROTECTION CLAUSE (ASPR 1-2302.4) (JUL 76)*

Except as provided in (c) below, contracts and subcontracts are exempt from the requirements of this Part and 40 CFR Part 15, as follows:

A. Contracts and subcontracts not exceeding \$100,000 are exempt.

B. Contracts and subcontracts for indefinite quantities are exempt if the Contracting Officer determines that the amount to be ordered in any year under such contract will not exceed \$100,000.

C. Except for small purchases, the foregoing exemptions shall not apply to a proposed contract under which the facility to be used is listed on the EPA List of Violating Facilities on the basis of a conviction either under the Air Act (40 U.S.C. 1857-8(c)(1) or the Water Act (33 U.S.C. 1319(c)).

D. This part and 40 CFR Part 15 do not apply to the use of facilities located outside the United States. The term "United States," as used herein, includes the States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam and American Samoa, and Trust Territories of the Pacific Islands.

E. Upon a determination that the paramount interest of the United States so requires, the Secretary concerned may except from the provisions of this Part any individual or class of contracts or subcontracts, for a period of one year. Prior to granting a class exemption, the Secretary shall consult with the Director, Office of Federal Activities, United States Environmental Protection Agency. The Secretary granting either an individual contract or class exemption shall notify the Director of such exemption as soon after granting the exemption as practicable. Such notification shall describe the purpose of the contract, and indicate the manner in which the paramount interest of the United States required that the exemption be made.

62. *AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (ASPR 7-103.28) (76 MAY)*

A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon either physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

C. In the event of the Contractor's noncompliance with the requirements of this clause, action for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2500 or more unless exempt by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

63. COVENANT AGAINST 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 or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

64. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

65. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment, as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

66. NONDISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of sex, race, creed, color, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

67. GRATUITIES

A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Contracting Officer or Governor or the duly authorized representative of either, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract: Provided, that the existence of the facts upon which the Contracting Officer or Governor or the duly authorized representative of either makes such findings shall be in issue and may be reviewed in any competent court.

B. In the event this contract is terminated as provided in paragraph (a) hereof, the State shall be entitled (1) 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 (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Contracting Officer or Governor or the duly authorized representative of either) which shall not be less than 3 nor more than 10 times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

C. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

68. COPELAND ("ANTI-KICKBACK") ACT - NONREBATE OF WAGES

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR, Part 3), made pursuant to the Copeland Act, as amended (40 U.S.C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U.S.C. 874) are made a part of this contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the prime contractor will be responsible for the submission of affidavits required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions.

69. SUBCONTRACTS - TERMINATION

The Contractor agrees to insert the clauses hereof entitled COPELAND ("ANTI-KICKBACK") ACT - NONREBATE OF WAGES, WITHHOLDING OF FUNDS, and SUBCONTRACTS - TERMINATION physically in all subcontracts and the Contractor further agrees that a breach of any of the requirements of these clauses may be grounds for termination of this contract. The term "contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "prime contractor."

70. AUDIT BY DEPARTMENT OF DEFENSE (1978 AUG)

A. General. The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs (B), (C) and (D) below.

B. Examination of Costs. If this is a cost reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

C. Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

D. Reports. If the Contractor is required to furnish Contractor Cost Data Reports (CCDR), Contract Fund Status Reports (CFSR), or Cost Performance Reports (CPR), the Contracting Officer or his representatives shall have the right to examine books, records, other documents, and other supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

E. Availability. The materials described in (B), (C) and (D) above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of three (3) years from the date of final payment under this contract or such lesser time specified in Appendix M of the Defense Acquisition Regulation and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

(2) Records which relate to appeals under the DISPUTES Clause of this contract, or litigation, or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of.

F. The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (F), in all subcontracts exceeding \$10,000 hereunder, except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the State primecontract.

71. SUBCONTRACTOR COST OR PRICING DATA - PRICE ADJUSTMENTS (1970 JAN)

A. Paragraphs (B) and (C) of this Clause shall become operative with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000. The requirements of this Clause shall be limited to such modifications.

B. The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) prior to the award of any subcontract the amount of which is expected to exceed \$100,000 when entered into;

(2) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

C. The Contractor shall insert the substance of this clause including this paragraph (C) in each subcontract which exceeds \$100,000.

72. BUY AMERICAN ACT (1966 OCT)

A. Agreement. In accordance with the Buy American Act (41 U.S.C. 10a - 10d), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for non-domestic construction material listed in the "Nondomestic Construction Materials" clause, if any, of this contract.

B. Domestic construction material. "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

C. Domestic component. A component shall be considered to have been mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

D. Non-Domestic construction material. The Contractor/Vendor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

73. APPROVAL

This contract and any subsequent terminations, modifications, or change orders (including those resulting from disputes and settlements of disputes) shall be subject to the written approval of the Chief, National Guard Bureau, or his duly authorized representative, and shall not be binding until so approved.

74. SUBJECT TO FEDERAL-STATE AGREEMENT

This contract is subject to all terms and conditions of the Federal-State Agreement between the United States of America and the State of Alabama.

75. RELATIONSHIP OF THE FEDERAL GOVERNMENT

This contract is funded in part by the Federal Government. The Federal Government is not a party to this contract. As a condition to receiving and expending Federal funds, there are certain rights of Federal inspection, Federal approval of contract changes and modifications, and Federal approval of settlements or dispute actions that the Federal Government will exercise prior to authorization of Federal funds. Therefore, no inspection or acceptance, change, modification, settlement, dispute claim payment, or dispute action will be

considered binding until the required Federal approval is obtained. The Chief, National Guard Bureau, or his designated representative, is the approval authority. This paragraph does not abrogate any rights conferred on the Federal Government by law or other clause required due to the use of Federal funding.

76. SUSPENSION OF WORK (1968 FEB) (DAR 7-602.46)

A. The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Owner.

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

C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

77. TERMINATION FOR CONVENIENCE OF THE OWNER - CONSTRUCTION (1974 APR) (DAR 7-602.29)

A. The performance of work under this contract may be terminated by the Owner in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Owner, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the Owner, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced as a part of, or required in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans,

drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Owner;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Owner to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Owner will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of paragraph C, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph E of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph D.

E. In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph D, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph D:

(1) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

(a) the cost of such work;

(b) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph B(5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above, and

(c) a sum, as profit on "a" above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision "c" and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph B(9); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to paragraph B(7).

F. Costs claimed, agreed to, or determined pursuant to C, D, E, and I hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

G. The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph C, E, or I hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph C or I hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph C, E, or I hereof the Owner shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

H. In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (2) any claim which the Owner may have against the Contractor in connection with the contract, and (3) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Owner.

I. If the termination hereunder be partial, the Contractor may file with the Contracting Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause must be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Contracting Officer.

J. The Owner may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Owner upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board for the period from the date such excess payment is received by the Contractor to the date on which

such excess is repaid to the Owner; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

K. Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall--from the effective date of termination until the expiration of three years after final settlement under this contract--preserve and make available to the Owner at all reasonable times at the office of the Contractor but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

78. USE OF UNITED STATES FLAG VESSELS

A. To use privately-owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo lines, and tankers) of any equipment, materials, or commodities that are both (1) procured, contracted for, or otherwise obtained with funds made available by State under this contract, and (2) transported by ocean vessel, to the extent such vessels are available at fair and reasonable rates;

B. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A above to both State and to the Division of National Cargo, Office of Market Development, U.S. Maritime Administration, Washington, D.C. 20590; and,

C. Subject to existing contracts, to insert the substance of the provisions of this section in all contracts issued pursuant to this contract, and to cause such provisions to be inserted in all subcontracts issued pursuant to this contract, where the contract or subcontract is for \$100,000 or more and where there is a possibility of ocean transportation of procured equipment or materials.

79. DEBARMENT AND SUSPENSION

A. Contractor/Vendor shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

B. The Final Rule, Government-Wide Debarment and Suspension (Nonprocurement), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 25) to implement the provisions of Executive Order 12549, "Debarment and Suspension" is incorporated by reference and the Contractor/Vendor covenants and agrees to comply with all provisions thereof, including any amendments to the Final Rule that may hereafter be issued.

80. NONDISCRIMINATION

A. The Contractor/Vendor covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor/Vendor's performance under this MCA, on the ground of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, the Contractor/Vendor covenants and agrees to comply with the following:

(1) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and DOD Regulations (32 CFR Part 300) issued thereunder;

(2) Executive Order 11246 and Department of Labor Regulations issued thereunder (41 CFR Part 60);

(3) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and DOD Regulations issued thereunder (32 CFR Part 56); and,

(4) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and DOD Regulations issued thereunder (45 CFR Part 90).

81. LOBBYING

A. The Contractor/Vendor covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. The Interim Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. 1352) is incorporated by reference.

82. DRUG-FREE WORK PLACE

A. The Contractor/Vendor covenants and agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free workplace.

B. The Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28, Subpart f) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor/Vendor covenants and agrees to comply with all the provisions thereof, including any amendments to the Final Rule that may hereafter be issued.

83. ENVIRONMENTAL STANDARDS

A. The Contractor/Vendor agrees that its performance under this contract shall comply with: the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318), that relate generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder; the Resources Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA); the National Environmental Policy Act (NEPA); and any applicable Federal, Contractor/Vendor or Local environmental regulation.

B. The Contractor/Vendor shall insure that no facility used in its performance under this contract is listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR Part 15 without the concurrence of State. The Contractor/Vendor shall notify State of the receipt of any communication from EPA indicating that a facility to be or being used in its performance under this contract is under consideration for listing on the EPA list of violating facilities.

C. For the purposes of this section, State agrees that the Contractor/Vendor's obligations in Paragraphs a. and b. of this section above shall not apply to any armory, base, training site, or other facility or portion thereof, the operation and maintenance of which is funded under this contract, that is currently listed as a violating facility, on the effective date of this contract, pursuant to 40 CFR Part 15; nor, shall such listing be the basis for State's termination for cause of this contract or for State's disallowance of any cost otherwise allowable under this contract. The Contractor/Vendor and State agree to cooperate to remediate, as expeditiously as possible, for any facility the operation and maintenance of which is within the scope of this contract, the condition giving rise to the listing of any such facility as a violating facility according to applicable statutes, regulations, or other agreements subject to the availability of funds.

84. NATIONAL HISTORIC PRESERVATION

Any construction, acquisition, modernization, or other activity that may impact a historic property.

A. The Contractor/Vendor agree to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593 (3 CFR, 1971-1975 Comp., p. 559).

36 CFR Part 800 requires Grants Officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.

85. HATCH ACT

A. The Contractor/Vendor agrees to comply with the Hatch Act (5 U.S.C. 1501 - 1508 and 7324 - 7328), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

86. CARGO PREFERENCE

Any agreement under which international air travel may be supported by U.S. Government funds.

A. Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

87. RELOCATION AND REAL PROPERTY ACQUISITION

A. The Contractor/Vendor agrees that it will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and regulations issued thereunder (49 CFR Part 24).

88. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

A. The Contractor/Vendor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay. This Act is applicable to any construction contract awarded in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.

89. DAVIS-BACON ACT

When required by Federal assistance program legislation, such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, environmental remediation construction, the following provision applies.

A. The Contractor/Vendor agrees that it will comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5). All rulings and interpretations of the Davis-Bacon Acts contained in 29 CFR Part 5 are incorporated by reference in this agreement. As applied to this agreement, the Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the Federal Government provides assistance funding for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a provision that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the U.S. Secretary of Labor.

90. STATE ADDENDUM

A. "It is agreed that the terms and commitments contained herein shall not constitute a debt of The State of Alabama in violation of Article II, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this contract shall contravene any statute, constitutional provision or amendment to the Constitution, now in effect or which may, during the course of this contract be enacted. Then that conflicting provision in the contract shall be deemed null and void."

B. “The Contractor’s sole remedy for settlement or any and all disputes arising under the Terms of this agreement shall be limited to filing a claim with The Board of Adjustment for the State of Alabama.”

C. “In event of proration of the fund from which payment under this contract is to be made; the contract will be subject to termination.”

D. “The Contractor acknowledges and understands this contract is not effective until it has received all requisite state government approvals and the Contractor shall not begin performance until notified to do so by State Property & Disbursing Office. The Contractor shall not be entitled to compensation for work performed prior to effective date of contract.”